Volume 33, Number 8, December 31, 2025

FLORIDA LAW WEEKLY FLW SUPPLEMENT

A PUBLICATION OF JUDICIAL AND ADMINISTRATIVE RESEARCH ASSOCIATES, INC.

Pages 319-363

Reports of Decisions of:
THE CIRCUIT COURTS OF FLORIDA
THE COUNTY COURTS OF FLORIDA
and
Miscellaneous Proceedings of Other Public Agencies

Readers are invited to submit for publication any decisions of these courts and any reports from other public bodies which are not generally reported and which would, because of the issues involved, be of interest to the legal community.

SUMMARIES

Summaries of selected opinions or orders published in this issue.

- **CRIMINAL LAW—WIRETAPS. A circuit court judge ruled that Florida's statewide prosecutor has authority, under both state and federal laws, to authorize an application for a wiretap.** *STATE v. SAVAGE. Circuit Court, Second Judicial Circuit in and for Leon County. Filed March 1, 2025. Full Text at Circuit Courts-Original Section, page 323a.*

- **PATERNITY—PRE-BIRTH AFFIRMATION—GESTATIONAL SURROGACY—DECLARATORY JUDGMENT. A commissioning couple filed a declaratory action seeking a declaration affirming their parental status under provisions of a surrogacy contract. The court declined to hold that provisions of the surrogacy agreement asserting the commissioning couple's ownership of the unborn child were valid. However, the court did find that it was possible to sever offending provisions of the contract that did not go to the heart of the agreement and concluded that the remaining provisions were compliant with statutes governing surrogacy contracts and that the commissioning couple's parental status was clear under those provisions.** *IN RE: B.L.C., A MINOR CHILD. Circuit Court, Seventeenth Judicial Circuit in and for Broward County. Filed August 14, 2025. Full Text at Circuit Courts-Original Section, page 331a.*

- **CRIMINAL LAW—FIREARMS—OPEN CARRY. A county court judge dismissed a charge premised on defendant's openly carrying a firearm based on the judge's conclusion that section 790.053, Florida's "Open Carry Ban," was unconstitutional.** *STATE v. DAVIS. County Court, Eleventh Judicial Circuit in and for Maimi-Dade County. Filed October 1, 2025. Full Text at County Court Section, page 348a.*

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FLW SUPPLEMENT

CASES REPORTED.

FLW Supplement includes reports of decisions of Florida circuit and county courts, and miscellaneous reports of the proceedings of other public agencies. Sections are divided as follows:

CIRCUIT COURT - APPELLATE	Opinions in those cases in which circuit courts were reviewing decisions of county courts or administrative agencies.
CIRCUIT COURT - ORIGINAL	Opinions in those cases in which circuit courts were acting as trial courts.
COUNTY COURTS	County court opinions.
MISCELLANEOUS	Other proceedings.

Subject Matter Index and Tables

Page prefixes in the subject matter index and tables identify the courts in the following manner:

10CIR 25	**Circuit Court - Appellate** (**Bold** type) (10th Circuit, page 25)
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CO	County Court
M	Miscellaneous Reports

Bold denotes decision by circuit court in its appellate capacity.

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CIRCUIT COURTS—APPELLATE

Licensing—Driver's license—Early reinstatement—Appeals—Certiorari—Timeliness—Petition for writ of certiorari challenging final order denying early reinstatement of driver's license was untimely where petition was filed more than 30 days after rendition of final order—Petition dismissed

WILLIAM SHANE ROBINSON, Petitioner, v. FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Circuit Court, 3rd Judicial Circuit (Appellate) in and for Suwannee County. Case No. 2025-69-CA. June 5, 2025. Counsel: William Shane Robinson, Pro se, Branford, Petitioner. Linsey Sims-Bohnenstiehl, Assistant General Counsel, DHSMV, for Respondent.

ORDER DISMISSING PETITION FOR WRIT OF CERTIORARI FOR LACK OF JURISDICTION

(KATHRYN R. LAND, J.) **THIS CAUSE** came before the Court upon the Petitioner's *pro se* Petition for Writ of Certiorari filed April 14, 2025. Upon consideration of the petition, the record, and applicable law, this Court finds and concludes as follows:

The instant petition is an appeal from a Final Order Denying Early Reinstatement issued by the Respondent's Bureau of Administrative Reviews on March 13, 2025. A copy of the order being appealed is attached to the petition.

Rule 9.100, Florida Rule of Appellate Procedure, lays out this Court's jurisdiction to issue writs of certiorari when exercising its appellate jurisdiction over a final order of an administrative agency. 9.100(a), Fla. R. App. P. The rule provides that a Petition for Writ of Certiorari must be filed within 30 days of rendition of the agency's final order. 9.100(c), Fla. R. App. P.

The Respondent's rule provides, "[t]he date of rendition of a final order shall be the date of mailing entered on the driver license record." Rule 15A-6.013(12), Fla. Admin. Code.

On June 3, 2025, this Court issued an order directing the Respondent to provide the Court with proof of the date of rendition of the final order appealed by the Petitioner in this case. The Respondent filed its response on June 4, 2025, providing the pertinent part of the Petitioner's driving record showing that the final order was rendered on March 13, 2025.

The Petitioner did not file the instant petition until 32 days after rendition of the final order he seeks to appeal.

When a petitioner fails to invoke the jurisdiction of a court within the time prescribed by the Rules of the Supreme Court, the failure to timely file divests the court of jurisdiction to review the matter. § 59.081, Fla. Stat.

Therefore, it is **ORDERED:**

The Petition for Writ of Certiorari is **DISMISSED FOR LACK OF JURISDICTION**. The Defendant may appeal this decision to the First District Court of Appeal within ***thirty (30) days*** of the date of this Order.

* * *

Licensing—Driver's license—Revocation—Early reinstatement—Denial—Hearing officer departed from essential requirements of law by denying hardship license to habitual traffic offender based on unofficial and unwritten policy of Department of Highway Safety and Motor Vehicles requiring that HTO not drive during revocation period—New hearing required

ROCK BOUCHARD III, Petitioner, v. STATE OF FLORIDA, DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Circuit Court, 5th Judicial Circuit (Appellate) in and for Lake County. Case No. 35-2019-CA-002080-A. October 13, 2020. Counsel: Christopher A. Blaine, Russo, Pelletier & Sullivan, P.A., St. Petersburg, for Petitioner.

ORDER ON PETITION FOR WRIT OF CERTIORARI

(JAMES R. BAXLEY, J.) THIS CAUSE comes before the Court on Petitioner's Petition for Writ of Certiorari to review a final order entered by the Department of Highway Safety and Motor Vehicles, filed September 27, 2019. Respondent filed a Response to Petition for Writ of Certiorari, and Petitioner subsequently filed a Reply to Respondent's Response to Petition for Writ of Certiorari. The Court, having reviewed the Petition and file, and being otherwise fully advised in the premises, finds as follows:

Petitioner seeks review of a denial of Petitioner's application for early driver's license reinstatement in the form of a "hardship license," which was reviewed at a hearing conducted by a Department of Highway Safety and Motor Vehicles (hereinafter "DHSMV") Hearing Officer on August 28, 2019. Petitioner seeks timely certiorari review in this Court, pursuant to Florida Rules of Civil Procedure 1.630, Florida Rules of Appellate Procedure 9.100 and pursuant to section 322.31 of Florida Statutes. Present in the file is a Transcript of the Hardship Hearing (hereinafter "Transcript"), held on August 28, 2019, in Pinellas County Court, and a Final Order Denying Early Reinstatement (hereinafter "Final Order") which was also entered August 28, 2019.

The Transcript shows that the Hearing Officer determined the facts after a review of records on Petitioner's conviction on December 15, 2016 for fleeing or attempt to elude police officers and driving while license was cancelled/revoked/suspended/disqualified. However, the Hearing Officer also considered a Department policy that apparently holds that no driving is permitted during the five-year revocation period of a Habitual Traffic Offender (hereinafter "HTO"). According to the Hearing Officer in the Transcript, driving during the revocation period would result in denial of a hardship license for not meeting the policy. The August 28, 2019 Final Order even specifically states that "Department of Highway Safety and Motor Vehicles policy requires that [Petitioner] not be driving during the revocation period."

Petitioner argues that the criteria for an HTO suspended driver to apply for early reinstatement of a license is specifically outlined in section 322.271(1)(b), Florida Statutes (2013) and Florida Administrative Code 15A-1.019. Petitioner posits that section 322.271(1)(b) and section 322.271(2) are the only parts of section 322.271, Florida Statutes (2013) applicable to the instant case, whilst the remainder of the statute only applies to individuals who lost their license as a result of a "Driving Under the Influence" (hereinafter "DUI"). Petitioner notes that Florida Administrative Code 15A-1.019 contains no provisions that prohibits the granting of early reinstatement of a license to an HTO revoked driver who had previously driven on a suspended license.

Petitioner asserts that he was not afforded procedural due process when his application for early reinstatement was denied. Petitioner claims that the referenced. Department policy is actually for section 322.271(2)(c) of which applies to individuals denied as a result of a DUI conviction. Petitioner further asserts that a reading of section 322.271(1)(b) shows that the Legislature did not include a similar requirement for when the Department must review a petition for reinstatement of driving privileges to an HTO revoked driver. Petitioner contends that the Hearing Officer's stated reason for denying the early reinstatement of Petitioner's license does not comply with a reading of section 322.271(1)(b), and that there is no apparent statutory requirements that the DHSMV automatically deny Petitioner's application when evidence shows that the Petitioner operated a motor vehicles while under suspension.

This Court finds that Respondent's argument that the Hearing Officer had discretion to deny early reinstatement of a license based on whether Petitioner could be trusted to operate a motor vehicle pursuant to section 322.271(2)(a) is hampered by a reading of the Transcript and Final Order wherein the denial was held as mandatory pursuant to the seemingly unofficial and unwritten Department policy. As the Department policy at issue was seemingly unofficial and unwritten, then the Final Order departs from the requirements of law and potentially deprived Petitioner of a review adhering to procedural due process.

Procedural due process must be afforded a party to a quasi-judicial proceeding. *Carillon Community Residential Assoc., Inc. v. Seminole County,* 45 So. 3d 7, 10 (Fla. 5th DCA 2010) [35 Fla. L. Weekly D1467a]. This Court's first-tier review is limited to determining whether the agency provided procedural due process, observed the essential requirements of law, and supported its findings with competent substantial evidence. *See Miami-Dade County v. Omnipoint Holdings, Inc.,* 863 So. 2d 195, 198-99 (Fla. 2003) [28 Fla. L. Weekly S717a]; *see also City of Deerfield Beach v. Vaillant,* 419 So. 2d 624, 626 (Fla. 1982).

As there are procedural due process concerns in the instant matter, the case shall be remanded to the Department for a new hearing that meets the essential requirements of the law. *See Dodson v. Dep't of Highway Safety & Motor Vehicles,* 120 So. 3d 69, 70 (Fla. 1st DCA 2013) [38 Fla. L. Weekly D1625a]. Accordingly, it is

ORDERED AND ADJUDGED:

1) The Petition for Writ of Certiorari is **GRANTED.**

2) The Final Order, entered August 28, 2020, is quashed and this matter is remanded to DHSMV for a new hearing which must be conducted pursuant to proper statutes and rules.

* * *

Municipal corporations—Code enforcement—Repeat violator—Special magistrate's finding that limited liability company that owned property at issue was a repeat code violator was contrary to sections 1.01(3) and 162.04(5) where finding was based on imputing to LLC violations from various other properties and LLCs without evidence justifying piercing veil of protection for an LLC

OREGON LLC, Appellant, v. CITY OF LEESBURG, FLORIDA, Appellee. Circuit Court, 5th Judicial Circuit (Appellate) in and for Lake County. Case No. 2025-AP-02. L.T. Case No. 2025030142. October 23, 2025. Appeal from Code Enforcement, Special Magistrate Kimberly A. Schulte, Leesburg. Counsel: Ryan A. Abrams and Ariel Grosfeld, Fort Lauderdale, for Appellant. William G. Watson, Mount Dora, for Appellee.

OPINION

(PER CURIAM.) The issue is whether there was insufficient evidence for the Special Magistrate to determine Appellant was a repeat code violator, which violated the unambiguous language of §1.01(3) and §162.04(5), Fla. Stat. We reverse.

At the time of the code violation investigation, Appellant was the owner of a property located at 114 N. Chester Street, Leesburg, Florida. The April 16, 2025, Special Magistrate Order imputed violations on Appellant from different properties and different LLC names. In determining that the various LLCs are the same "person" to find repeat code violations under §162.04(5), Fla. Stat., the Special Magistrate referenced the overlapping Managers, Registered Agents, and Members of the various Limited Liability Companies, along with transfers of properties between the LLCs for little or no consideration.

A repeat violation is defined as a violation of a code "by a person who has been previously found . . . to have violated . . . the same provision within 5 years prior to the violation, notwithstanding the violations occur at different locations." §162.04(5), Fla. Stat. Section 1.01(3), Florida Statutes, includes limited liability companies as a "person." While not explicitly listed, case law supports the position that limited liability companies are "persons". A limited liability company is "an autonomous legal entity, separate and distinct from its members." *Palma v. South Florida Pulmonary & Critical Care, LLC*, 307 So. 3d 860, 866 (Fla. 3d DCA 2020) [45 Fla. L. Weekly D2175a]. To pierce the veil of protection for an LLC, it must be shown that members (1) "dominated and controlled the LLC to such an extent that the LLC had no existence independent of" the members and it was merely an instrumentality or alter-ego of them; (2) the LLC was used "fraudulently or for an improper purpose;" and (3) that use caused injury. *Segal v. Forastero, LLC*, 322 So. 3d 159, 162-62 (Fla. 3d DCA 2021) [46 Fla. L. Weekly D1295a]. "[T]he mere fact that one or more individuals controls the corporate activities is not sufficient to justify" piercing the veil. *Sirmons v. Arnold Lumber Co.*, 167 So. 2d 588, 589 (Fla. 2d DCA 1964). The record before this Court is insufficient to show Appellant used the LLC for a fraudulent or improper purpose, other than the Special Magistrate's "finding" of such an implication. Thus, finding Appellant as a repeat code violator is contrary to the unambiguous language of §1.01(3) and §162.04(5), Fla. Stat.

Because the Special Magistrate's Order is reversed and remanded on other grounds, it is not necessary to discuss Appellant's third argument regarding ex parte communication, other than to state ex parte communication is inherently improper in quasi-judicial proceedings. *See Jennings v. Dade County*, 589 So. 2d 1337 (Fla. 3d DCA 1991).

We REVERSE the Special Magistrate's April 16, 2025 Order of Enforcement and Findings of Fact, Conclusions of Law, Order of Fine and REMAND for new proceedings. (TAKAC, M., EINEMAN, and T., HERNDON, L., JJ., concur.)

* * *

Licensing—Driver's license—Suspension—Refusal to submit to breath test—Lawfulness of stop and arrest—Traffic infraction—Driving in reverse—Stop for driving in reverse without evidence that driving interfered with other traffic was not lawful—Hearing officer's determination that refusal to submit to breath test was incident to lawful arrest was not supported by competent substantial evidence

JONATHAN ESTEBAN SIERRA, Petitioner, v. DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Circuit Court, 13th Judicial Circuit (Appellate) in and for Hillsborough County, General Civil Division. Case No. 25-CA-004400. Division D. September 19, 2025. Counsel: Rocky Brancato, Brancato Law Firm, P.A., Tampa, for Petitioner. Linsey Sims-Bohnenstiehl, Assistant General Counsel, DHSMV, Tampa, for Respondent.

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

(EMILY A. PEACOCK, J.) This case is before the court on Jonathan Esteban Sierra's Petition for Writ of Certiorari. The petition is timely, and this court has jurisdiction. §322.31, Fla. Stat. Petitioner contends that the Department's decision departed from the essential requirements of the law by misapplying Florida Statute § 316.1985 and that the Department lacked competent, substantial evidence to find that Petitioner's refusal to submit to a breath alcohol test was incident to a lawful arrest because Petitioner alleges that there was no evidence that his driving backwards to change lanes violated any statute or interfered with traffic and therefore there was no evidence to support the conclusion that law enforcement had a reasonable suspicion to justify conducting a traffic stop. After reviewing the petition, response, appendices, and applicable law, the court finds that the hearing officer lacked competent, substantial evidence when determining that Petitioner's refusal to submit to a breath alcohol test was incident to a lawful arrest because there are no facts in the record to support the conclusion that law enforcement had a reasonable suspicion to initiate

a traffic stop and thus lacked evidence to find that the subsequent arrest was lawful. Accordingly, the petition is granted.

On March 15, 2025, Petitioner was stopped by Deputy Douglas of the Hillsborough County Sheriff's Department (HCSO) for backing down the wrong way on the road. Deputy Liggins arrived after the initial stop, conducted a DUI investigation, and found that Petitioner displayed multiple signs of impairment. Petitioner was arrested for Driving Under the Influence (DUI) and refused to submit to a breath alcohol test.

Petitioner timely requested an administrative hearing, which was held on April 15, 2025, to challenge the lawfulness of the suspension of his driving privilege. The hearing officer reviewed the relevant police report. Petitioner states that no witness testimony was given at the hearing but does not allege that he subpoenaed any witnesses to appear. At the hearing Petitioner argued that the record lacked evidence to indicate that his driving was unsafe or interfered with traffic, thus there was no indication that his driving violated Florida Statute § 316.1985, thus the initial traffic stop was unlawful, making the subsequent arrest was unlawful, and therefore his refusal to submit to a breath alcohol test was not incident to a lawful arrest. The hearing officer rejected this argument, finding that "Petitioner's driving pattern was sufficiently great that it exceeded the normal fluctuations which occur routinely in most driving patterns, was greater than would be practicable and as such, the initial stop was lawful, notwithstanding the lack of effect on traffic."

Petitioner asserts that the hearing officer lacked competent, substantial evidence to support the finding that the initial stop was lawful because there was nothing in the record to support the conclusion that Deputy Douglas had a reasonable suspicion to conduct the initial traffic stop that ultimately lead to Petitioner's arrest. When circuit courts review license revocation hearings, the analysis inherently "contains a Fourth Amendment analysis of whether there was reasonable suspicion to stop the vehicle or probable cause to believe that the driver was in physical control of the vehicle while under the influence of alcohol." *Wiggins v. Fla. Dep't of Highway Safety & Motor Vehicles*, 209 So. 3d 1165, 1172 (Fla. 2017) [42 Fla. L. Weekly S85a]. While the court may not reweigh evidence or substitute its findings of fact for those of the hearing officer, the court is tasked with reviewing the record to determine whether any competent, substantial evidence exists to support the hearing officer's conclusion. *See id*. While the Department is permitted to conduct a hearing and base its findings of fact solely on the documents furnished to the Department by law enforcement, doing so may result in a lack of competent, substantial evidence where the documents do not contain a description of factual observations sufficient to support the conclusion that the initial stop or subsequent arrest were lawful. *See DHSMV v. Colling*, 178 So. 3d 2, 5 (Fla. 5th DCA 2014) [39 Fla. L. Weekly D1195b].

In this case, Petitioner is correct that the documents submitted to the Department do not contain competent, substantial evidence of objective factual observations to support the conclusion that the initial traffic stop was lawful. The only objective factual observation in the record related to the initial traffic stop states "[Deputy Douglas] observed [Petitioner's vehicle] reversing eastbound in the westbound lane to turn northbound on Heritage Greens Pkwy. [Deputy Douglas] activated [his] emergency equipment (lights and siren) and conducted a traffic stop on Heritage Greens Pkwy / Big Bend Rd." Petitioner is correct that "reversing eastbound in the westbound lane to turn northbound" on its own is not sufficient to establish a reasonable suspicion to justify a traffic stop. Driving in reverse, on its own, is not unlawful and does not indicate anything usual or suspicious about the driver's behavior—to the contrary, the relevant statute explicitly allows for circumstances where driving in reverse may be done safely and lawfully. Fla. Stat. § 316.1985 ("The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic."); *Nelson v. State*, 922 So. 2d 447, 450 (Fla. 2d DCA 2006) [31 Fla. L. Weekly D794a] (finding that a traffic stop cannot be found to be lawful where driving backwards briefly, without interfering with traffic, is the only justification for the stop). Because the record does not contain any evidence or objective, factual observations to support the conclusion that the initial stop was lawful, the record lacked competent, substantial evidence to support the conclusion that the subsequent arrest was lawful, which in turn precludes the conclusion that Petitioner's refusal to submit to a breath alcohol test was incident to a lawful arrest.

It is therefore ORDERED that the petition is GRANTED in Tampa, Hillsborough County, Florida, on September 19, 2025.

* * *

Licensing—Driver's license—Suspension—Refusal to submit to breath test—Lawfulness of arrest—Actual physical control of vehicle—Officer's observation of car key on vehicle floorboard next to licensee's feet was sufficient to establish officer's observation of licensee's control of vehicle—Petition for writ of certiorari is denied

WILLIAM FECKLEY, Petitioner, v. STATE OF FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Circuit Court, 13th Judicial Circuit (Appellate) in and for Hillsborough County, Circuit Civil Division. Case No. 23-CA-016710. Division O. July 16, 2025. Counsel: Linsey Sims-Bohnenstiehl, Assistant General Counsel, DHSMV, for Respondent.

ORDER DENYING
PETITION FOR WRIT OF CERTIORARI

(LAURA E. WARD, J.) THIS MATTER is before the court on Petitioner William Feckley's Petition for Writ of Certiorari filed June 23, 2023, in the County Court, transferred on November 17, 2023, and received by the Circuit Civil Court on June 3, 2024. The petition is timely and this court has jurisdiction. § 322.31, Fla. Stat. Petitioner seeks review of the Department's final order upholding the suspension of his driving privilege for his refusal to submit to a breath test to determine his breath alcohol level. Petitioner contends that the Department lacked the competent, substantial evidence necessary to find that Petitioner was lawfully arrested because there is nothing in the record to establish that Petitioner was in control of the key to the vehicle's ignition, and thus insufficient evidence in the record to establish probable cause for a lawful DUI arrest. Having reviewed the petition, response, reply, appendix, and being otherwise fully advised, the court finds that the law enforcement officer's observation of a "car key" on the floorboard next to Petitioner's feet is sufficient to establish the officer's observation of the Petitioner's control of the vehicle. Accordingly, the petition is denied.

On April 21, 2023, Petitioner was arrested for DUI after Hillsborough County Sheriff's Office (HCSO) Deputies Goff and Tracey observed Petitioner sleeping in the passenger seat of his vehicle in a convenience store parking lot. Petitioner does not contest that he displayed multiple signs of impairment when the deputies roused him. Petitioner refused to submit to a breath test after being read the implied consent warning and his license was suspended as a result. On May 22, 2023, there was a formal hearing to review the suspension.

The Court is limited to considering "whether procedural due process is accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence." *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). When a driver refuses to submit to a breath test, the hearing officer must consider:

1. Whether the law enforcement officer had probable cause to believe that the person whose license was suspended was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances.
2. Whether the person whose license was suspended refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer.
3. Whether the person whose license was suspended was told that if he or she refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months.

The court may not reweigh evidence. *DHSMV v. Baird*, 175 So. 3d 363, 365 (Fla. 3d DCA 2015) [40 Fla. L. Weekly D2160a] (citing *DHSMV v. Porter,* 791 So. 2d 32, 35 (Fla. 2d DCA 2001) [26 Fla. L. Weekly D1161a]). The officer wrote in the report that he observed "the keys to the vehicle" and testified as to that fact at the hearing. Petitioner is contesting the officer's use of the words "keys to the vehicle" arguing that this was a conclusory assumption rather than a factual observation. Bare conclusory statements do not satisfy the competent substantial evidence requirement, but factual observations by law enforcement officers do. Petitioner acknowledges *McMullin v. DHSMV*, 28 Fla. L. Weekly Supp. 979a (Fla. 11th Cir. Ct. App. for Miami-Dade Co., 2020), where the court found that probable cause was established when the arresting officer observed a key fob in plain view, and argues that it is distinguishable from the present case because a key fob is sufficiently unique so as to justify the belief that it belongs to the vehicle. However, Deputy Tracey testified at the hearing and counsel for Petitioner had the opportunity to question him about his observation. Counsel asked "when you opened the front passenger side door you observed what kind—you said you saw keys between his feet located on the passenger side floorboard?" Deputy Tracey responded "[c]orrect, they keys to the vehicle were, yes, on the floorboard." Counsel followed up ". . . did you assume they were they keys to the vehicle because they looked like car keys?" to which the deputy responded "[c]orrect." The court finds that Deputy Tracey's testimony to be competent, substantial evidence establishing the location of Petitioner's car key prior to his arrest. The hearing officer therefore had competent, substantial evidence to find that Petitioner's arrest was lawful.

It is therefore ORDERED that the Petition for Writ of Certiorari is DENIED.

* * *

Schools—Colleges and universities—Student discipline—Petition to quash university board of trustees' decision to dismiss student from college of medicine is denied—No merit to argument that statute pertaining to student codes of conduct does not apply to post-baccalaureate student—Further, petitioner failed to provide adequate record and preserve points raised in petition

JIONG GAO, Petitioner, v. FLORIDA ATLANTIC UNIVERSITY BOARD OF TRUSTEES, Respondent. Circuit Court, 15th Judicial Circuit (Appellate) in and for Palm Beach County, Appellate Civil Division AY. Case No. 50-2025-CA-003012-XXXA-MB. October 20, 2025. Counsel: Stewart Lee Karlin, Ft. Lauderdale, for Petitioner. Lourdes E. Wydler and Lauren D. Martin, Coral Gables, for Respondent.

(PER CURIAM.) Petitioner, Jiong Gao ("Petitioner"), petitions to the Court to quash the decision of the Florida Atlantic University Board of Trustees ("Respondent") to dismiss Petitioner from the Florida Atlantic University Schmidt College of Medicine. We deny on all points raised by the Petition but write to clarify the applicability of Section 1006.60, Florida Statutes.

Respondent argues that Section 1006.60, Florida Statutes does not apply to the circumstances in this case, as Petitioner is a post-baccalaureate student. Respondent does not provide supporting authority for this argument. The Court rejects this argument but denies the Petition based on the other points raised by Respondent.

Additionally, we note that Petitioner failed to provide an adequate record of the lower tribunal proceedings. *See Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979) and failed to preserve points raised in the Petition. *Dep't of Bus. & Prof'l Regulation, Const. Indus. Licensing Bd. v. Harden*, 10 So. 3d 647, 649 (Fla. 1st DCA 2009) [34 Fla. L. Weekly D651c]; *Pullen v. State*, 818 So. 2d 601, 602 (Fla. 1st DCA 2002) [27 Fla. L. Weekly D1038a] ("A party cannot argue on appeal matters which were not properly excepted to or challenged in the administrative tribunal.").

Accordingly, we **DENY** the Petition. (CURLEY, NUTT, and SCOTT, JJ., concur.)

* * *

Municipal corporations—Appeals—Special magistrate orders—Timeliness—Appeal filed more than 30 days after rendition of special magistrate's final order is dismissed—Appellant's assertion that it was not furnished copy of order does not extend jurisdictional time limit for filing appeal

COURTLAND HOMES at the GROVE MAINTENANCE ASSOCIATION, Appellant, v. CITY OF WESTON, Appellee. Circuit Court, 17th Judicial Circuit (Appellate) in and for Broward County. Case No. CACE-24-009496 (AP). L.T. Case No. 23-01120. September 18, 2025. Appeal from the City of Weston, Special Magistrate Michael D. Cirullo. Counsel: Jacqueline A. Grady, Grady Legal, P.A., Vero Beach, for Appellant. Blayne J. Yudis , Weiss Serota Helfman Cole & Bierman, P.L., Ft. Lauderdale, for Appellee.

OPINION

Having carefully considered the briefs, appendixes, the record, and the applicable law, this Court dispenses with oral argument, and finds as follows:

The record must include only materials furnished to and reviewed by the lower tribunal in advance of the administrative action to be reviewed by the court. Fla. R. App. P. 9.190(c)(1). "Appellate review is limited to the record as made before the trial court at the time of the entry of a final judgment or orders complained of." *Rosenberg v. Rosenberg*, 511 So. 2d 593, fn. 3 (Fla. 3rd DCA 1987).

The Special Magistrate's Final Order was rendered on March 20, 2024. Appellant filed a Notice of Appeal of said Final Order on July 9, 2024. "The Notice of Appeal was filed more than thirty days following rendition of the order appealed from, so we are without jurisdiction and the appeal is dismissed. Appellant's assertion that it was not furnished a copy of the order and thus did not have timely notice of its entry does not extend the jurisdictional time limit for appeal." *Snelson v. Snelson*, 440 So. 2d 477 (Fla. 5th DCA 1983); Fla. R. App. P. 9.110(c). Further, "subject matter jurisdiction cannot be conferred by waiver or consent." *Peltz v. District Court of Appeal, Third District,* 605 So. 2d 865 (Fla. 1992).

Accordingly, Appellant's appeal is **AFFIRMED.** (BOWMAN, CARBUCCIA, and SIEGAL, JJ. concur.)

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CIRCUIT COURTS—ORIGINAL

Criminal law—Search and seizure—Intercepted communications—Wiretaps—Under Florida law, statewide prosecutor is deemed principal prosecuting attorney for state and may authorize applications for wiretaps—Motions to suppress information gathered on defendant and codefendant from wiretap of defendant's phone, on grounds that statewide prosecutor did not have authority to authorize application for wiretap, are denied

STATE OF FLORIDA, v. LASONYA SAVAGE and DELMETRICE ROGERS, Defendants. Circuit Court, 2nd Judicial Circuit in and for Leon County. Case No. 2021-CF-776. March 1, 2025. Lance E. Neff, Judge. Counsel: Guillermo Vallejo, Special Assistant State Attorney, Office of Statewide Prosecution, Tallahassee, for State. Kristian Dunn, Law Office of Kris Dunn, P.A., Tallahassee, for Defendants.

ORDER DENYING THE MOTIONS TO SUPPRESS AND GRANTING THE MOTION FOR RECONSIDERATION

This matter is before the Court upon the Defendant Savage's Motion to Suppress filed on November 4, 2024. After a response from the State, a hearing was held on December 10, 2024. After an hour-long hearing, questions remained. Therefore, I requested supplemental briefing from the parties. That supplemental briefing has been provided. Within its supplemental briefing, the State renewed its request for this Court to reconsider a prior order issued by the previous judge assigned to the case which granted Defendant Rogers' Motion to Suppress. For the reader unversed in this saga, I will provide a brief history of the case thus far.

I. Brief synopsis of the case to date

Ms. Savage and Mr. Rogers are co-defendants in this case. In 2021, a wiretap was sought for Mr. Rogers' phone. The process for that wiretap application occurred as follows. A special agent with the Florida Department of Law Enforcement requested permission from the Statewide Prosecutor, Nicholas Cox, for authorization to apply for a wiretap from a judge in the Second Judicial Circuit. Authorization from the Statewide Prosecutor was given on February 15, 2021. The special agent applied for, and received, an order approving a wiretap for the phone number associated with Mr. Rogers. Subsequently, a case was developed against Mr. Rogers and Ms. Savage based on the information law enforcement learned from the wiretap.

When Mr. Rogers moved to suppress the information against him obtained through the wiretap on his phone, Mr. Rogers' sole reason for the suppression was that the wiretap was illegally approved. Specifically, Mr. Rogers relied upon 18 U.S.C. § 2516(2), a provision in the Federal Wiretap Act, which authorizes two categories of individuals to apply to State courts for orders authorizing wiretaps: (1) the "principal prosecuting attorney of any State" or (2) the "principal prosecuting attorney of any political subdivision thereof." Mr. Rogers, based on this federal law, asserted that only two people in Leon County are authorized to approve the filing of an application for a wiretap: the Attorney General and the State Attorney for the Second Judicial Circuit. The State responded to this argument by claiming that the Statewide Prosecutor was authorized to make wiretap applications to State courts under the Federal Wiretap Act because he is the principal prosecuting attorney of a political subdivision. The previous judge on this case found that the Statewide Prosecutor was not a principal prosecuting attorney of any political subdivision of the State. The First District Court of Appeal affirmed that decision in *State v. Rogers*, 391 So. 3d 661 (Fla. 1st DCA 2024) [49 Fla. L. Weekly D1580c]. However, the appellate court's holding was confined to the issue of whether the Statewide Prosecutor was a principal prosecuting attorney of a political subdivision of this State. No other issue was properly before the First District Court of Appeal. *Id.* at 667 ("As such, the State's argument that the Statewide Prosecutor is Florida's principal prosecuting attorney is not properly before us in this appeal.").

While the appeal was pending, the previous judge assigned to this case in the circuit court rotated to another division and I took over the case. Shortly after the First District Court of Appeal made its decision, the State requested reconsideration in this Court. In the motion, the State requested that I reconsider the order of the previous judge under the new theory that the Statewide Prosecutor was the principal prosecuting attorney of the State. On August 19, 2024, I declined to entertain the motion from the State. At that time, I did not believe there was an adequate reason to reconsider the issue.

Encouraged by the success of her co-defendant, on November 4, 2024, Ms. Savage moved to suppress the phone calls she made to Mr. Rogers which were intercepted under the wiretap that had been authorized on his phone. Her theory is that if the wiretap approved for Mr. Rogers' phone was illegally requested, then any of her phone calls to Mr. Rogers' phone were obtained without a lawful wiretap and should be suppressed as well.

Thus, the issue currently before the Court is whether the information gathered from the wiretap on Mr. Rogers' phone which relates to Ms. Savage should be suppressed. In order to make that determination, the Court must reassess the wiretap as it pertains to Mr. Rogers since Ms. Savage's entire theory of suppression rests on the legality of the wiretap of Mr. Rogers' phone. This is required because the determination of Ms. Savage's motion, and the State's response thereto, necessitates that I evaluate the legality of Mr. Rogers' wiretap under a different theory, *i.e.*, whether the Statewide Prosecutor is the principal prosecuting attorney of the State. If the wiretap of Mr. Roger's phone was legitimate under that theory, then Ms. Savage's motion is without a foundation. This is an adequate reason to reconsider the issue. Therefore, I am **GRANTING** the State's renewed Motion for Reconsideration.[1]

Much ink has been devoted to briefing these motions. While I appreciate this effort by the parties, my review of the materials made clear that the matter is not complex if one carefully reviews the development of the State and federal law in this area. To clarify the law surrounding this issue, I will start where all good and proper analysis should begin, with the words of the texts in dispute. Therefore, I will begin my analysis by reviewing and discussing the pertinent federal and State wiretap statutes. Next, I will examine what my judicial brethren in the federal courts have to say regarding which State-level entities may authorize an application for a wiretap under the federal wiretap statute. I will then review Florida constitutional and statutory text to determine who Florida deems to be the principal prosecuting attorney of the State. Finally, I will discuss two State law cases to determine what the Florida Supreme Court and the First District Court of Appeal have held regarding this issue.

II. The interplay between the State and federal wiretap statutes and how that interplay impacts who may authorize a wiretap application under State law

It is well established that an attempt to monitor telephone conversations must comport with constitutional proscriptions. *Katz v. United States*, 389 U.S. 347, 353 (1967). To ensure more extensive protection of communications privacy, Congress enacted legislation that controls the use of electronic surveillance. 18 U.S.C. § 2510 *et seq*. This statutory scheme contemplates State regulation that does not erode the federal standards, 18 U.S.C. § 2516(2), and Florida has enacted such legislation. Section 934.01 *et seq*., Fla. Stat. The Florida Supreme

Court has held that Florida's wiretap statute must be strictly construed and narrowly limited in its application in accordance with the specific provisions set out by the Legislature. *State v. Rivers*, 660 So. 2d 1360, 1362 (Fla. 1995) [20 Fla. L. Weekly S315a].

As it pertains to which State-level entity is the principal prosecuting attorney of the State, I will start with the words of 18 U.S.C. § 2516(2). This federal law states in pertinent part:

> The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made[.]

18 U.S.C. § 2516(2). This statute plainly asserts that the principal prosecuting attorney of any State, if authorized by State statute, may apply to a State court for an order authorizing or approving a wiretap by the investigative or law enforcement officers having responsibility for the investigation.

Consequently, in accordance with this provision of federal law, what positions are authorized to apply for a wiretap under the Florida analog to the federal wiretap statute? Section 934.07(1) states, "The Governor, the Attorney General, the statewide prosecutor, or any state attorney may authorize an application to a judge of competent jurisdiction for, and such judge may grant in conformity with ss. 934.03-934.09 an order authorizing or approving the interception of, wire, oral, or electronic communications[.]" Thus, it seems as if the Florida Legislature has designated three State-level entities[2] with the power to authorize an application for a wiretap, evocative of the First Triumvirate of Rome. However, may Florida authorize more than one high-level entity to approve wiretap applications?[3] Federal courts construing federal wiretap law have weighed in on this matter and have answered in the affirmative.

Federal appellate courts, in a couple of interesting analyses about the interplay between the Florida and federal wiretap statutes, have determined that Florida has wide latitude regarding what entities it may designate to authorize an application for a wiretap. In the first case, the pre-1981 Fifth Circuit Court of Appeals[4], which covered Florida at that time, agreed that State law controls when determining what State entity has the power to authorize applications for wiretaps. In *United States v. Pacheco*, 489 F.2d 554 (5th Cir. 1974), the Governor of Florida authorized an application for a wiretap and that authorization was challenged on the ground that the Governor was not the principal prosecuting attorney. *Id*. at 562. The Fifth Circuit stated, "The purpose of including this requirement in the federal statute was not to designate a particular officer by name or title but to ensure the centralization of policy decisions of this type at the highest practicable levels, preferably on a statewide basis." *Id*. For support, the court cited a United States Senate report which noted, "The intent of the proposed provision is to provide for the centralization of policy relating to statewide law enforcement in the area of the use of electronic surveillance in the chief prosecuting officer of the State. Who that officer would be would be a question of State law." *Id*. The *Pacheco* court held:

> The determination that is to be made by the state official designated in accordance with the federal statute is whether a particular proposed use of monitoring techniques is consistent with the state's overall policy in this area. In such matters of policy, the governor represents the state and is superior to all prosecuting attorneys of the state. Florida's designation of its governor to determine the propriety of applications for federal interceptions comports fully with the federal requirements and ensures the safeguards for which the statute is designed.

489 F.2d at 562-63. Thus, the *Pacheco* court determined that the designation of who may authorize an application for a wiretap is a matter of State law and should not be disturbed as long as the State's designations are entities which make statewide policy. *See also United States v. Lanza*, 341 F. Supp. 405, 411 (M.D. Fla. 1972) ("Florida's designation of its Governor to determine the propriety of applications for monitoring complies fully with the federal requirements and ensures the guarantees the statute intends to preserve.").

In the second federal appellate case, the then recently formed Eleventh Circuit followed up the *Pacheco* decision in 1985 stating that both the Governor of Florida and the Attorney General of Florida had the authority to authorize wiretap applications under the federal statute. As the Eleventh Circuit stated in *U.S. v. Domme*, 753 F.2d 950 (11th Cir. 1985):

> The *Pacheco* court did not hold, however, that the Governor is the principal prosecuting attorney of the State of Florida. Rather, the court simply recognized that a State's Governor, being its chief executive officer, is ultimately responsible for setting statewide policy in most areas. *See id.* at 562 n. 14 (the issue in this case is whether the Attorney General's *superior* can approve wiretap applications). Thus, the inclusion of the Governor in the Florida wiretap statute was perfectly consistent with Congress's purpose to centralize the responsibility for wiretap authorization.
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> In short, the Attorney General remains the principal prosecuting attorney of the State of Florida, and therefore may authorize wiretap applications under the federal statute. The appellants in the instant case received all of the protection required by the express terms of the federal statute, and have no standing to challenge the fact that Florida, and this court's predecessor, have acknowledged the Governor's authority to approve wiretap applications. We therefore conclude that the federal statute was complied with in this case and we reject the argument that *Pacheco* requires us to reverse the appellants' convictions.

Domme, 753 F.2d at 956-57. Thus, the *Pacheco* and *Domme* decisions stand for the proposition that Florida has broad authority regarding who it may designate to apply for authorization for a wiretap.[5] While these federal decisions apply questionable textual analysis, the decisions tacitly affirm comity and State sovereignty. And since federal case law supports Florida's sovereign choice of which entities are designated under State law to authorize an application for a wiretap, the next question is whether the Statewide Prosecutor is the principal prosecuting attorney under State law.

After the *Pacheco* and *Domme* decisions were decided, the People of this State passed an amendment to the Florida Constitution in 1986 adding the position of the Statewide Prosecutor.[6] Today, Article IV, Section 4 of the Florida Constitution states the following:

> The attorney general shall be the chief state legal officer. There is created in the office of the attorney general the position of statewide prosecutor. The statewide prosecutor shall have concurrent jurisdiction with the state attorneys to prosecute violations of criminal laws occurring or having occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is affecting or has affected two or more judicial circuits as provided by general law. The statewide prosecutor shall be appointed by the attorney general from not less than three persons nominated by the judicial nominating commission for the supreme court, or as otherwise provided by general law.

FL. CONST. art. IV, §4(b). Here, the primary legal document of this State, in the spirit of subsidiarity, gives the Statewide Prosecutor the

power to prosecute criminal cases where the criminal acts are occurring or have occurred in two or more judicial circuits. Thus, by definition, the Statewide Prosecutor could prosecute criminal acts which occur in two judicial circuits, across several judicial circuits, or statewide. *See also*, *e.g.*, section 812.015(10), Fla. Stat. This jurisdictional authority, as the name "Statewide Prosecutor" suggests, is certainly broader that what state attorneys are provided under State law. The various state attorneys are generally confined to pursue acts occurring solely within their judicial circuit. Section 27.02(1), Fla. Stat.; *see also* section 27.14, Fla. Stat. And although each state attorney has concurrent jurisdiction with the Statewide Prosecutor to investigate and prosecute crimes in his or her judicial circuit, the Statewide Prosecutor, as a singular entity, has the jurisdiction to investigate and prosecute crimes in all judicial circuits as long as the crimes committed are of a particular type[7] and are committed across more than one judicial circuit. Thus, on the hierarchy of prosecuting attorneys in the State, the Statewide Prosecutor has broader jurisdictional authority than state attorneys. But does that make the Statewide Prosecutor the principal prosecuting attorney of the State rather than the Attorney General, who is the chief legal officer of the State?

Fortunately, the Florida Legislature has given us more guidance regarding that question. Section 16.56 of the Florida Statutes puts forth the specific legal authority for the Office of Statewide Prosecution. Section 16.56(2) has a telling provision:

> (2) The Attorney General shall appoint a statewide prosecutor from not less than three persons nominated by the judicial nominating commission for the Supreme Court. The statewide prosecutor shall be in charge of the Office of Statewide Prosecution for a term of 4 years to run concurrently with the term of the appointing official. The statewide prosecutor shall be an elector of the state, shall have been a member of The Florida Bar for the preceding 5 years, and shall devote full time to the duties of statewide prosecutor and not engage in the private practice of law. The Attorney General may remove the statewide prosecutor prior to the end of his or her term. A vacancy in the position of statewide prosecutor shall be filled within 60 days. *During the period of any vacancy, the Attorney General shall exercise all the powers and perform all the duties of the statewide prosecutor.* A person appointed statewide prosecutor is prohibited from running for or accepting appointment to any state office for a period of 2 years following vacation of office. The statewide prosecutor shall on March 1 of each year report in writing to the Governor and the Attorney General on the activities of the office for the preceding year and on the goals and objectives for the next year.

(emphasis added). The emphasized provision in this section demonstrates that it is the Statewide Prosecutor alone who is bestowed the power to prosecute crimes at the State, *i.e.*, multi-judicial circuit, level. Only when there is a vacancy of the Statewide Prosecutor does the Attorney General take on the responsibility of multi-judicial circuit prosecutions. A review of Chapter 16 of the Florida Statutes as a whole, and section 16.56 particularly, confirm that criminal investigatory and prosecutorial responsibility at the statewide level has been assigned to the Office of Statewide Prosecution.[8] Thus, as a matter of deductive reasoning based on the Florida Constitution and the Florida Statutes, the Statewide Prosecutor is the principal prosecuting attorney of the State. That power has been delegated to the Statewide Prosecutor from the chief legal officer of the State, the Attorney General, pursuant to the requirements of the Florida Constitution and general law.

Lastly, does anything in my analysis conflict with *State v. Daniels*, 389 So. 2d 631 (Fla. 1980), or *Daniels v. State*, 381 So. 2d 707, 715 (Fla. 1st DCA 1979)? In the *Daniels* case at the First District Court of Appeal, the court reviewed whether an assistant state attorney was authorized to apply for a wiretap. The First District Court of Appeal held:

> [T]he applicable federal statute is preemptive and a careful reading of that statute can only lead to the conclusion that the "principal prosecuting attorney" authorized by 18 U.S.C. s 2516(2) to make application for an order authorizing or approving the interception of wire or oral communications cannot be construed to include an assistant state attorney.

Daniels v. State, 381 So. 2d 707, 715 (Fla. 1st DCA 1979). The First District Court of Appeal, upon petition for rehearing, certified the following question to the Florida Supreme Court:

> Does Title 18 U.S.C. Section 2516, requiring application by the "principal prosecuting attorney" for an order authorizing or approving the interception of wire or oral communications, preclude the exercise of that power by a general class of prosecutors who are assistant state attorneys in Florida?

Daniels v. State, 381 So. 2d 707, 719 (Fla. 1st DCA 1979).

The Florida Supreme Court, in answering the certified question, reviewed the State and federal wiretap statutes as well as cases discussing those statutes. The 1975 version of section 934.07, the version under review by the Florida Supreme Court in *Daniels*, allowed for the Governor, the Department of Legal Affairs, or any State Attorney to authorize an application for a wiretap. *Daniels*, 389 So. 2d at 633. The position of assistant state attorney was not specifically named in the Florida wiretap statute as an entity which could authorize an application for a wiretap. However, the State argued that because another statute outside of the Florida wiretap statute—section 27.181(3), Fla. Stat. (1975)—allowed for a State Attorney to delegate authority to an assistant state attorney, it did not matter that the entity was not specifically listed in section 934.07. After review of State and federal law, the Florida Supreme Court ultimately held:

> Based on section 2516, its legislative history, and the *Giordano* decision, we conclude that section 27.181(3), Florida Statutes (1975), cannot be held to empower assistant state attorneys to authorize applications for electronic eavesdropping orders. This is so for two reasons. First, Congress intended such authority to be limited to a narrow class of officials to ensure that such decisions come from a centralized, politically responsive source. Second, the officials who may exercise this power must be specifically enumerated in the authorizing statute. Our statute granting assistant state attorneys all the powers of state attorneys generally is not a specific grant of authority to authorize electronic surveillance applications.

State v. Daniels, 389 So. 2d 631, 636 (Fla. 1980).

Nothing in my analysis above is inconsistent with the specific holdings of the Florida Supreme Court or the First District Court of Appeal. I agree that a lower-level State official not specifically named in section 934.07(1) is without authority to authorize an application for a wiretap. However, the Statewide Prosecutor, a high-level State official, is explicitly named in section 934.07(1). Thus, I am strictly construing and narrowly limiting the specific provisions of Florida's wiretap statute as set out by the Legislature. *State v. Rivers*, 660 So. 2d 1360, 1362 (Fla. 1995) [20 Fla. L. Weekly S315a]. I am also following the decisions of federal courts construing the federal wiretap statute when I acknowledge that the Governor of Florida and the Attorney General of Florida may also authorize an application for a wiretap since both are specifically named in the Florida wiretap statute and both are high-level officials responsible for setting statewide policy. Finally, I am following the sovereign will of the People of Florida who changed their Constitution in 1986 to establish the position of Statewide Prosecutor as the principal prosecuting attorney of Florida.

III. Conclusion

As laid forth above, Florida law deems the Statewide Prosecutor as

the principal prosecuting attorney of this State. Federal law defers to State law to determine who may be designated the principal prosecuting attorney of the State. And Florida law delegates that responsibility, per its Constitution, to the Statewide Prosecutor. However, because the Statewide Prosecutor's authority is delegated from the Attorney General, the Attorney General, as the chief legal officer of the State, may also authorize wiretap applications. Similarly, because the Governor is the "supreme executive power" of this State per the Florida Constitution, see FL. CONST. art. IV, §1, the Governor, too, may authorize wiretap applications. Federal case law fully supports this triumvirate of authorized persons because each person is responsible for setting statewide policy and because allowing these entities such authority is consistent with Congress's purpose to centralize the responsibility for wiretap authorization. *Domme*, 753 F.2d 950, at 956-57; *see also Pacheco*, 489 F.2d at 562-63. In short, the designation of the Governor, the Attorney General, and the Statewide Prosecutor as State-level positions which may authorize an application for a wiretap is fully supported by a specific provision of the Florida wiretap statute and is fully consistent with the federal wiretap statute as interpreted by the federal courts. Accordingly, Mr. Rogers' Motion to Suppress and Ms. Savage's Motion to Suppress are DENIED.

While this Court scheduled a follow-up hearing on March 26, 2025, I do not need any further guidance from the parties to decide this matter. The March 26, 2025 hearing is CANCELLED. The parties have received an abundance of due process and opportunity to be heard regarding the central issue of whether the Statewide Prosecutor is the principal prosecuting attorney of Florida.[9] It is more important to decide the pending motions and to get this case moving again, particularly since the case is likely going back to the First District Court of Appeal.

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[1]On, February 4, 2025, Defendants Savage and Rogers moved to quash the renewed Motion for Reconsideration filed by the State. While the Defendants assert *res judicata* and collateral estoppel prevent me from reconsidering the prior decision of this Court, I disagree. In order to decide Ms. Savage's Motion to Suppress, I must reconsider the propriety of the authorization given by the Statewide Prosecutor under the alternate theory now being proposed by the State. The issue of whether the Statewide Prosecutor is the principal prosecuting attorney of this State has not been decided in this case at the trial or appellate levels.

[2]As set forth below, the history of the interplay between State and federal law provides context for why these three positions are named in State law.

[3]Florida does greatly enjoy dividing power amongst several entities as can be seen in how our executive branch is structured. *See generally* FL. CONST. art. IV. And because federal law does not define "principal prosecuting attorney," but leaves that for the States to decide, this Court should rule in a manner that maximizes State sovereignty in accordance with the Tenth Amendment of the United States Constitution. *See, e.g.*, *New York v. United States*, 505 U.S. 144, 157 (1992) ("The Tenth Amendment thus directs us to determine, as in this case, whether an incident of state sovereignty is protected by a limitation on an Article I power."). While my counterparts on the federal bench often show low regard for State sovereignty, leading to overreach, the Tenth Amendment instead requires the maximization of State sovereignty as the Supremacy Clause and prudent judgment allow.

[4]The federal Eleventh Circuit Court of Appeals was created in 1981 when the former Fifth Circuit Court of Appeals was split into two parts. Florida, Georgia, and Alabama became the Eleventh Circuit. *See Bonner v. City of Prichard, Ala.*, 661 F.2d 1206, 1210 (11th Cir. 1981) (*en banc*) (noting that decisions by the former Fifth Circuit issued before October 1, 1981, are binding as precedent in the Eleventh Circuit.).

[5]This sentiment has been echoed by at least one Florida judge who, citing *Pacheco*, asserted, "[t]he intent of Congress in enacting [18 U.S.C. § 2516(2)] [was] not to designate a particular officer by name or title, but to insure the centralization of policy decisions of this type. What officer or officers within the State are designated by the State to apply for authorization for wiretap is a matter of State law." *Daniels v. State*, 381 So. 2d 707, 716 (Fla. 1st DCA 1979) (Booth, J., concurring in part and dissenting in part).

[6]In 1986, Amendment 1 passed with 72.8% of voters in favor of adding a position of Statewide Prosecutor to the Florida Constitution. *See* Florida Department of State, Division of Elections, November 4, 1986 General Election Official Results https://results.elections.myflorida.com/Index.asp?ElectionDate=11/4/1986&DATAMODE= (last visited February 25, 2025).

[7]The Florida Legislature has given the Office of Statewide Prosecution the authority to investigate and prosecute a wide variety of crimes. §16.56(1)(a), Fla. Stat.

[8]As another example, the Medicaid Fraud Control Unit "may refer any criminal violation so uncovered to the appropriate prosecuting authority." § 16.59, Fla. Stat. For the criminal prosecutors within the Medicaid Fraud Control Unit to have the authority to prosecute Medicaid fraud in State courts, they must be cross sworn with a local state attorney if the crime occurred in a single judicial circuit or with the Office of Statewide Prosecution if the crime occurred across two or more judicial circuits.

[9]The parties were also provided an opportunity to argue at the December 10, 2024 hearing and to provide supplemental briefing on the issue of whether this Court is prevented from rehearing the decision regarding Mr. Rogers' Motion to Suppress.

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Torts—Counties—Premises liability—Trip and fall on sidewalk—Sovereign immunity—Waiver—Conditions precedent— Notice—Plaintiff failed to satisfy notice requirements of section 768.28 where description of accident in claim letter was not sufficient to allow county to investigate claim—Premature suit—Suit filed less than 7 months after claim letter was sent to county and before county denied claim was premature—Sending claim letter to Florida Department of Financial Services does not constitute notice to county—Action is dismissed without prejudice

RANDY FERREIRA, Plaintiff, v. MIAMI-DADE COUNTY, et al., Defendant. Circuit Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2024-023633-CA-01. Section CA11. September 18, 2025. Spencer Eig, Judge. Counsel: Anthony J. Cabrera, Travis R. Hoopingarner, and Scott Morrison, Jr., Cabrera Hoopingarner, P.A., Miami, for Plaintiff. Richard Schevis, Assistant County Attorney, Miami-Dade County Attorney's Office, Miami, for Defendant.

ORDER GRANTING MIAMI-DADE COUNTY'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER is before the Court upon Miami-Dade County's Motion For Summary Judgment. The Court held a hearing on this motion on September 8, 2025, via Zoom, and heard from all parties of record. Having considered the motion, Plaintiff's response brief, the record, and the relevant legal authorities, the Court grants the County's motion for summary judgment and dismisses this case without prejudice.

1. This is a personal-injury lawsuit in which the Plaintiff claims he was injured on a sidewalk in Miami-Dade County. Plaintiff sued Miami-Dade County alleging that it was negligent in failing to maintain the sidewalk in a reasonably safe condition.

2. Florida Statute § 768.28(6) sets conditions a claimant must meet before suing the County. The claimant must provide written notice that describes the claim with enough detail to allow the County to investigate; and wait until the County denies the claim or six months pass without a decision. If these requirements are not met, sovereign immunity is not waived and the court lacks jurisdiction.

3. Miami-Dade County moved for summary judgment asserting that its sovereign immunity has not been waived in this action because (a) Plaintiff failed to give sufficient presuit notice of his claim by failing to identify the location of his accident, and (b) Plaintiff filed this lawsuit prematurely, before six months had past and before the County denied his claim.

4. On the first issue, Florida's partial-waiver-of-sovereign-immunity statute requires a person asserting a claim against a governmental entity to present a claim in writing before bringing a lawsuit. § 768.28(6)(a), Fla. Stat. (2024). Although there is no specific form, the notice must describe the occurrence with sufficient detail to enable the governmental entity to investigate the claim. *Metro. Dade County v. Coats*, 559 So. 2d 71, 72 (Fla. 3d DCA 1990); *see also Franklin v. Palm Beach County*, 534 So. 2d 828, 829 (Fla. 4th DCA 1988) (explaining that the written notice of claim must sufficiently describe or identify the occurrence so that the agency may investigate it); *LaRiviere v. So. Broward Hosp. Dist.*, 889 So.2d 972, 974 (Fla. 4th DCA 2004) [30 Fla. L. Weekly D11a] (noting that "the notice, in any form, must be sufficiently direct and specific to reasonably put the department on

notice of the existence of the claim and demand"); *Vargas v. City Of Fort Myers*, 137 So.3d 1031, 1033-1034 (Fla. 2d DCA 2014) [39 Fla. L. Weekly D165a] ("The notice must be sufficiently direct and specific to reasonably put the department on notice of the existence of the claim and demand."); *Magee v. City of Jacksonville*, 87 So.2d 589, 591-592 (Fla. 1956) (holding that "a municipality is entitled to a reasonable notice of a pending claim against it in order to enable the City to make a thorough investigation of the claim before admitting or denying liability in connection with a demand that might require the expenditure of public funds").

5. The record evidence in this case shows that Plaintiff's claim letter to Miami-Dade County asserted that Plaintiff was injured as a result of a defective or broken sign in the middle of the road and described the location of the incident as "122 Street with 156 Ave Kendall, FL." The County presented evidence that "122 Street with 156 Ave Kendall, FL" is not an identifiable location and that using this information, the County was not able to find the location of the alleged incident and thus was unable to investigate the claim.

6. In response to this point, Plaintiff argues that the law does not require a claimant to provide an exact address or to identify the location of a claimant's accident in minute detail. In support, Plaintiff cites to *Magee v. City of Jacksonville*, 87 So. 2d 589 (Fla. 1956) and *Otero v. City of Hialeah*, 731 So. 2d 116 (Fla. 3d DCA 1999) [24 Fla. L. Weekly D986a]. In the *Magee* case, the claimant described the location of the accident as the "south side of 6th Street in Jacksonville between Market Street and Hubbard Street [which is] a distance of approximately 160 yards." *Magee*, 87 So. 2d at 591. That amount of specificity was deemed sufficient to enable the governmental entity to investigate the claim, and thus it satisfied the notice requirement under Florida Statute § 768.28. In the *Otero* case, the claimant described the location of the accident as being in front of the Immaculate Conception Catholic Church, but the accident actually occurred in front of the Immaculate Conception Catholic School. *Otero*, 731 So. 2d at 117. When the governmental entity requested additional information, the claimant responded, clarifying the claim. *Id.* That amount of specificity was deemed sufficient to enable the governmental entity to investigate the claim, and thus it satisfied the notice requirement under Florida Statute § 768.28.

7. In this case, the only record evidence shows that Plaintiff's description of the accident location (*i.e.*, 122 Street with 156 Ave., Kendall, FL) was not an identifiable location and based on this description the County was not able to identify the location of Plaintiff's accident. Plaintiff has not presented any evidence to the contrary.

8. Because the record evidence establishes that Plaintiff's description of the accident location in his presuit claim letter was insufficient to enable the County to investigate the claim, the Court finds that Plaintiff failed to satisfy the notice requirement under Florida Statute § 768.28. Summary judgment is appropriate on this point.

9. Turning to the second issue—whether Plaintiff filed this lawsuit prematurely. Florida's partial-waiver-of-sovereign-immunity statute requires a claimant to submit a claim in writing to the County and wait until the County denies the claim before filing a lawsuit. § 768.28(6)(a), Fla. Stat. (2024). The claim is deemed denied if the County fails to act on the claim for six months. § 768.28(6)(d), Fla. Stat. (2024).

10. Miami-Dade County cites to record evidence that it first received Plaintiff's claim letter on September 10, 2024. Plaintiff filed this lawsuit on December 12, 2024. Although the County had not yet denied the claim, Plaintiff filed this lawsuit three months after the September 10, 2024 claim letter.

11. In response to this point, Plaintiff argues that he first sent a claim letter to the County in March 2024, which is eight months before he filed suit. Plaintiff cites to a claim letter dated March 29, 2024. But that letter was sent to the Florida Department of Financial Services in Tallahassee, Florida.

12. The County presented evidence that Miami-Dade County is a separate and independent governmental entity from the Florida Department of Financial Services; that the Miami-Dade County Risk Management Division does not maintain an office in Tallahassee, Florida, and has never done so; and that notices of claims directed to the Florida Department of Financial Services in Tallahassee are not received by Miami-Dade County or its Risk Management Division, unless separately transmitted directly to Miami-Dade County.

13. The Court finds that Plaintiff's March 29, 2024 claim letter sent to the Florida Department of Financial Services in Tallahassee does not constitute notice to Miami-Dade County. *Cf. Scott v. Harris*, 550 U.S. 372, 380 (2007) [20 Fla. L. Weekly Fed. S225a].

14. The Court further finds that Miami-Dade County first received Plaintiff's claim letter on September 10, 2024; that Plaintiff filed suit less than six months from this date and before the County denied his claim. Given this timing, the Court finds that Plaintiff filed this lawsuit prematurely and contrary to the plain language of Florida Statute § 768.28(6). Summary judgment is appropriate on this point.

For the foregoing reasons, and after considering the motion for summary judgment, the response brief, the record, and the relevant legal authorities, the Court grants Miami-Dade County's motion for summary judgment and dismisses this action without prejudice.

* * *

Consumer law—Florida Deceptive and Unfair Trade Practices Act—Motor vehicle dealers—Sale of vehicle—Dealer committed per se violations of section 320.27(9)(b)3 and FDUTPA where dealer represented that vehicle purchased by plaintiff was Audi S3 despite having performed no diagnostic testing or inspections to substantiate that claim, and plaintiff later learned that vehicle was not equipped with S3 engine—Dealer violated section 501.976(18) and committed per se violation of FDUTPA by charging plaintiff a document processing fee that was a pre-delivery service fee without including statutorily-required disclosures—Undisputed record showing that dealer sold vehicle in violation of mandatory duties with respect to emissions equipment, misrepresented condition of vehicle, and falsely certified compliance with emission laws established per se violation of FDUTPA—Summary judgment on count alleging breach of express warranty is precluded by genuine issues of material fact concerning whether any express warranty was made regarding vehicle's configuration, whether representations extended beyond mere sales talk, and scope and enforceability of any warranty—Summary judgment on count alleging violation of Florida Consumer Collection Practices Act is precluded by disputes of material fact on whether dealer knew at time of communication that asserted right to collect pre-delivery service fee was nonexistent—Damages—Plaintiff is entitled to damages reflecting diminution in value of vehicle and amount of pre-delivery service fee—Injunctions—Where plaintiff is an aggrieved consumer and dealer's violations demonstrate pattern of unfair and deceptive conduct, plaintiff is entitled to permanent injunctive relief enjoining dealer from those violations—Plaintiff is entitled to award of attorney's fees and costs

RYAN PERSAUD, Plaintiff, v. GULF COAST AUTO BROKERS, INC., a Florida corporation, and GROW FINANCIAL CREDIT UNION, A Federal credit union, Defendants. Circuit Court, 12th Judicial Circuit in and for Sarasota County, Civil Division. Case No. 2023-CA-006884-NC. October 13, 2025. Hunter W. Carroll, Judge. Counsel: Joshua Feygin, Sue Your Dealer—A Law Firm, Hollywood, for

Plaintiff. Hamdee Saif Khader, Tampa, for Gulf Coast Auto Brokers, Inc., Defendant. Sammy Hatem Hamed, Tampa, for Grow Financial Credit Union, Defendant.

ORDER ON PLAINTIFF'S RENEWED MOTION FOR PARTIAL SUMMARY JUDGMENT

THIS MATTER came before the Court on September 25, 2025, via remote videoconference, on Plaintiff, Ryan Persaud's ("**Plaintiff**") Renewed Motion for Partial Summary Judgment (DIN 243) ("**Motion**"), Defendant, Gulf Coast Auto Broker's ("**Defendant**" or "**Dealer**") Response (DIN 255) ("**Response**") and Plaintiff's Reply (DIN 262) ("**Reply**"). Plaintiff was represented by counsel, Joshua Feygin, Esq.; Defendant Gulf Coast Auto Brokers, Inc., was represented by counsel, Hamdee Khader, Esq.; and Defendant Grow Financial Credit Union appeared through counsel, Rob Keller, Esq. The Court, having considered the Motion, Response, Reply, Plaintiff's Statement of Material Facts (DIN 242), Plaintiff's Expert Report (DIN 119) the record evidence including the deposition transcript of the Defendant's Corporate Representative, Samer Khader (DIN 157), and applicable law, heard argument, and being otherwise fully advised, finds and concludes as follows:

FINDINGS OF FACT

1. On or about March 9th, 2023, the Plaintiff entered into a written contract Retail Purchase Agreement with Dealer for the purchase of a motor vehicle that was advertised as a 2016 Audi S3 VIN ending in 72541 ("**Vehicle**") for the purchase price of $23,955.00, exclusive of sales tax, and incidental charges.

2. A true and correct copy of the Retail Purchase Agreement ("**RPA**") is attached to the Plaintiff's Motion and incorporated therein by reference as Exhibit "A."

3. At the time of the sale of the Vehicle, the Defendant was a Florida profit corporation licensed as a motor vehicle dealership under Florida law.

4. To finance the purchase of the Vehicle, Dealer prepared and Plaintiff executed a Retail Installment Sale Contract ("**RISC**") with the Dealer to finance the resulting balance.

5. A true and correct copy of the RISC is attached to the Plaintiff's Motion for Summary Judgment and incorporated therein by reference as Exhibit "C."

6. As reflected in the RISC and RPA, Plaintiff paid a $3,000 downpayment.

7. As reflected in the RISC, Dealership charged a $799.00 "Document Processing Fee."

8. Plaintiff paid the $799.00 "Document Processing Fee" to Defendant.

9. The $799.00 Document Processing Fee was not associated with the statutory disclosure required by Fla. Stat. 501.976(18).

10. During the sales process, Dealer prepared and presented to Plaintiff a Vehicle Air Pollution Control Statement for execution.

11. A true and correct copy of the Air Pollution Control Statement is attached to the Plaintiff's Motion for Summary Judgment and incorporated therein by reference as Exhibit "D."

12. Shortly after purchasing the Vehicle, Plaintiff experienced unexpected mechanical issues.

13. Plaintiff delivered the Vehicle for diagnostic evaluation to Christian Brothers Automotive ("**CBA**") on or about March 21, 2023.

14. A true and correct copy of Repair Order No. 52558 from CBA is attached to the Plaintiff's Motion for Summary Judgment as Composite Exhibit "E."

15. CBA visually inspected the Vehicle and determined it was missing a catalytic converter.

16. Defendant does not know whether it inspected the Vehicle before selling it to the Plaintiff.

17. Defendant has no written policies or procedures for inspecting vehicles before their sale to consumers, nor does Defendant maintain records of inspections.

18. Defendant is unaware of where the catalytic converter for the Vehicle is located.

19. Defendant did not inspect the Vehicle's engine before selling it to Plaintiff.

20. Defendant did not complete a computer diagnostic of the Vehicle before selling it to Plaintiff.

21. Defendant represented that the Vehicle was an S3 model to the Plaintiff.

22. Plaintiff reasonably believed the Vehicle would have the engine of an S3 model.

23. Plaintiff's decision to purchase the Vehicle was influenced by the performance capabilities of an S3 model and the Defendant's representations that the Audi was an S3 model with all of the components that are germane to an S3 model.

24. Following the purchase of the Vehicle, Plaintiff was informed by Audi of Sarasota on or about May 24, 2023 that the Vehicle had an Audi A3 engine fitted to it instead of the S3 engine.

25. A true and correct copy of the Audi Sarasota Invoice No. AUCS77145 is attached to the Plaintiff's Motion for Summary Judgment as Exhibit "B."

26. Plaintiff would not have agreed to purchase the Audi or paid significantly less for it had he known that it had an A3 engine installed.

27. An Audi A3 has inferior performance attributes than an Audi S3.

28. The Audi was purchased for household purposes.

CONCLUSIONS OF LAW

The Florida Legislature enacted the Florida Deceptive and Unfair Trade Practices Act ("**FDUTPA**") to protect the consuming public from deceptive and unfair trade practices. *S.D.S. Autos, Inc. v. Chrzanowski*, 976 So. 2d 600, 602 (Fla. 1st DCA 2007) [32 Fla. L. Weekly D2793b]. As a remedial consumer protection statute, FDUTPA must be liberally construed to effectuate its protective purposes. *Davis v. Powertel, Inc.*, 776 So. 2d 971, 974 (Fla. 1st DCA 2000) [26 Fla. L. Weekly D146a]; *Jones v. Santander Consumer USA Inc.*, No. 16-14012-CIV, 2016 WL 11503863, at *5 (S.D. Fla. Aug. 1, 2016). FDUTPA provides a distinct statutory cause of action designed to remedy consumer injuries caused by deceptive or unfair business practices. *Rollins, Inc. v. Butland*, 951 So. 2d 860, 869 (Fla. 2d DCA 2006) [31 Fla. L. Weekly D3148a]; Fla. Stat. § 501.204(1). The statute's scope extends beyond common-law fraud to encompass deceptive or unfair conduct that traditional fraud doctrines may not reach. *PNR, Inc. v. Beacon Prop. Mgmt., Inc.*, 842 So. 2d 773, 777 (Fla. 2003) [28 Fla. L. Weekly S229a]; *Guerrero v. Target Corp.*, 889 F. Supp. 2d 1348, 1355 (S.D. Fla. 2012). FDUTPA does not require plaintiffs to prove reliance *Fitzpatrick v. Gen. Mills, Inc.*, 635 F.3d 1279, 1283 (11th Cir. 2011) [22 Fla. L. Weekly Fed. C1925a]; *Cabrera v. Haims Motors, Inc.*, 288 F. Supp. 3d 1315, 1322-23 (S.D. Fla. 2017).

To establish a FDUTPA violation, a plaintiff must prove: (1) a deceptive act or unfair practice; (2) causation; and (3) actual damages. Fla. Stat. §§ 501.204(1), 501.2075; *Rollins*, 951 So. 2d at 869. A practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances. *PNR, Inc.*, 842 So. 2d at 777. Unlike common-law fraud, FDUTPA does not require proof of scienter or justifiable reliance. *Fitzpatrick v. Gen. Mills, Inc.*, 635 F.3d 1279, 1282 (11th Cir. 2011) [22 Fla. L. Weekly Fed. C1925a]; *Cabrera v. Haims Motors, Inc.*, 288 F. Supp. 3d 1315, 1322-23 (S.D. Fla. 2017). The proper inquiry is whether a reasonable consumer would have been misled by the challenged practice. *Fitzpatrick*, 635

F.3d at 1283.

FDUTPA declares that any "[v]iolation of any rule adopted under this part or by the Federal Trade Commission" constitutes a violation of the statute. Fla. Stat. § 501.203(3)(c). The violation of certain predicate statutes or regulations incorporated by FDUTPA constitutes a *per se* violation of the Act, eliminating the need to prove that the conduct is independently deceptive or unfair under general FDUTPA standards. *State Farm Mut. Auto. Ins. Co. v. Performance Orthopaedics & Neurosurgery, LLC*, 315 F. Supp. 3d 1291, 1300 (S.D. Fla. 2018); *Parr v. Maesbury Homes, Inc.*, No. 6:09-cv-1268, 2009 WL 5171770, at *8 (M.D. Fla. Dec. 22, 2009).

I. Count 1—FDUTPA - Per se violation of Fla. Stat. § 320.27(9)(b)(3)

Florida Statute § 320.27(9)(b)(3) prohibits motor vehicle dealers from engaging in: "Misrepresentation or false, deceptive, or misleading statements with regard to the sale or financing of motor vehicles which any motor vehicle dealer has, or causes to have, advertised, printed, displayed, published, distributed, broadcast, televised, or made in any manner with regard to the sale or financing of motor vehicles."

A misrepresentation under this provision occurs when a dealer makes a factual statement about a vehicle's model or configuration that materially differs from the product delivered. Courts have long recognized that the model designation of a vehicle necessarily denotes its corresponding engine and performance specifications. *See Kilborn v. Henderson*, 65 So. 2d 533, 536 (Ala. Ct. App. 1953) (holding that "the engine is an essential part of an automobile" and a purchaser has the right to rely on a vehicle's model designation as a representation of its complete configuration, including its powertrain). When the actual vehicle materially departs from that description, a misrepresentation has occurred regardless of whether the misstatement was intentional.

The undisputed evidence establishes that Plaintiff purchased a vehicle represented and advertised as a 2016 Audi S3 pursuant to the written RPA dated March 9, 2023, for a purchase price of $23,955.00. After the Vehicle developed drivetrain issues, Audi of Sarasota inspected the Vehicle and determined that it was not equipped with a factory S3 engine. Defendant has offered no evidence disputing this conclusion.

The evidence further demonstrates that Defendant affirmatively represented the Vehicle to be an Audi S3 with performance-oriented features, including an authentic S3 engine. Despite these representations, Defendant performed no diagnostic testing or inspections of the Vehicle to substantiate its claims, reflecting deceptive and misleading conduct.

Accordingly, Gulf Coast Auto has committed a *per se* violation of Fla. Stat. § 320.27(9)(b)(3). Because the statute imposes liability without requiring proof of intent or knowledge; it is sufficient that Defendant's representations regarding the Vehicle's configuration were inaccurate or unsubstantiated.

Because violations of § 320.27(9)(b)3 are expressly recognized as unfair or deceptive acts under FDUTPA, Gulf Coast's conduct constitutes a *per se* FDUTPA violation. *See* Fla. Stat. § 501.203(3)(c); *Tirtel v. Sunset Auto & Truck, Ltd. Liab. Co.*, No. 2:18-cv-481-FtM-99MRM, 2018 U.S. Dist. LEXIS 205441, at *11 (M.D. Fla. Dec. 5, 2018); *State Farm Mut. Auto. Ins. Co. v. Performance Orthopaedics & Neurosurgery, LLC*, 315 F. Supp. 3d 1291, 1300 (M.D. Fla. 2018); *Parr v. Maesbury Homes, Inc.*, No. 6:09-cv-1268-Orl-19GJK, 2009 WL 5171770, at *8 (M.D. Fla. Dec. 22, 2009).

Plaintiff's motion is **GRANTED** as to Count 1.

II. Count 2—FDUTPA - Per se violation of Fla. Stat. § 501.976(3).

Florida Statutes § 320.27(9)(b)(3) prohibits motor vehicle dealers from making "[m]isrepresentation or false, deceptive, or misleading statements with regard to the sale or financing of motor vehicles." This provision applies to any statement a dealer "has, or causes to have, advertised, printed, displayed, published, distributed, broadcast, televised, or made in any manner with regard to the sale or financing of motor vehicles." Fla. Stat. § 320.27(9)(b)(3).

A misrepresentation under this statute occurs when a dealer makes a material factual statement about a vehicle that does not correspond to the actual vehicle sold. The model designation of a vehicle is a material representation that encompasses the vehicle's essential specifications, including its engine and powertrain configuration. A dealer's representation that a vehicle is a particular model constitutes a representation about the vehicle's complete factory configuration. *See Kilborn v. Henderson*, 65 So. 2d 533, 536 (Ala. Ct. App. 1953) (recognizing that "the engine is an essential part of an automobile"). When the delivered vehicle materially departs from the model designation advertised and sold, a statutory misrepresentation has occurred.

The undisputed facts establish that Defendant sold Plaintiff a vehicle advertised, represented, and documented as a 2016 Audi S3 in a written Retail Purchase Agreement dated March 9, 2023, for a purchase price of $23,955.00. Following drivetrain issues, an authorized Audi dealership inspected the vehicle and determined it was not equipped with a factory S3 engine. Defendant has presented no evidence controverting this determination or demonstrating that the vehicle delivered to Plaintiff possessed the genuine S3 powertrain corresponding to the S3 model designation under which it was sold.

The record further demonstrates that Defendant affirmatively represented the vehicle as an Audi S3 with corresponding performance specifications and features. Despite these representations, Defendant performed no diagnostic testing or inspection to verify the vehicle's actual engine or powertrain configuration prior to sale.

Section 320.27(9)(b)(3) imposes strict liability for misrepresentations in motor vehicle sales. The statute does not require proof of a dealer's intent, knowledge, or scienter. *See* Fla. Stat. § 320.27(9)(b)(3); *cf. PNR, Inc. v. Beacon Prop. Mgmt., Inc.*, 842 So. 2d 773, 777 (Fla. 2003) [28 Fla. L. Weekly S229a] (noting FDUTPA does not require proof of intent). It is sufficient that the dealer's representations regarding the vehicle were materially inaccurate. Based on the undisputed evidence, Defendant violated Fla. Stat. § 320.27(9)(b)(3) as a matter of law. The Court finds that the Defendant's statements were false representations and the sale was done under false pretenses regarding the S3 model status of the vehicle.

Violations of § 320.27(9)(b)(3) constitute *per se* violations of FDUTPA. Florida Statutes § 501.203(3)(c) expressly declares that violation of any law or rule incorporated within FDUTPA's scope constitutes a violation of the Act. Fla. Stat. § 501.203(3)(c). Section 320.27(9)(b)(3) falls within FDUTPA's incorporated provisions. *See State Farm Mut. Auto. Ins. Co. v. Performance Orthopaedics & Neurosurgery, LLC*, 315 F. Supp. 3d 1291, 1300 (S.D. Fla. 2018); *Tirtel v. Sunset Auto & Truck, Ltd. Liab. Co.*, No. 2:18-cv-481, 2018 WL 6444329, at *4 (M.D. Fla. Dec. 5, 2018); *Parr v. Maesbury Homes, Inc.*, No. 6:09-cv-1268, 2009 WL 5171770, at *8 (M.D. Fla. Dec. 22, 2009). Defendant's violation of § 320.27(9)(b)(3) therefore constitutes a FDUTPA violation without requiring independent proof that the conduct was deceptive or unfair under general FDUTPA standards.

Accordingly, Plaintiff's motion is **GRANTED** as to Count 2.

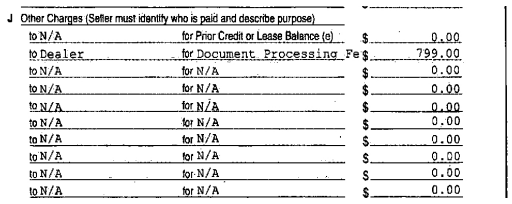
III. Count 4—FDUTPA - Per se violation of Fla. Stat. § 501.976(18)

Florida Statute § 501.976(18) prohibits a dealer from charging a predelivery service fee unless the fee is accompanied by the following disclosure: "This charge represents costs and profit to the dealer for

items such as inspecting, cleaning, and adjusting vehicles, and preparing documents related to the sale."

This requirement is clear and unambiguous, and courts have consistently held that predelivery service fees imposed without the statutory disclosure violate the statute as a matter of law. See *Cabrera*, 288 F. Supp. 3d 1318, 1324 (S.D. Fla. 2018); *Jonathan Perez v. Rick Case Cars, Inc.*, 30 Fla. L. Weekly Supp. 512a (Fla. Broward Cnty. Ct. Jan. 9, 2022).

The undisputed evidence establishes that Gulf Coast charged Plaintiff a $799 "Document Processing Fee" as part of the Retail Installment Sales Contract for the Audi.



J Other Charges (Seller must identify who is paid and describe purpose)

to N/A	for Prior Credit or Lease Balance (e)	$ 0.00
to Dealer	for Document Processing Fe	$ 799.00
to N/A	for N/A	$ 0.00
to N/A	for N/A	$ 0.00
to N/A	for N/A	$ 0.00
to N/A	for N/A	$ 0.00
to N/A	for N/A	$ 0.00
to N/A	for N/A	$ 0.00
to N/A	for N/A	$ 0.00
to N/A	for N/A	$ 0.00

That charge is a predelivery service fee. Defendant, however, failed to include the disclosure mandated by § 501.976(18). Indeed, Defendant admitted that it "did not provide the proper notice on all documents" as required by law. The Court finds that the Defendant made a false representation through omission.

By charging a predelivery service fee without the required disclosure, Defendant violated § 501.976(18). Such a violation constitutes a *per se* violation of FDUTPA because § 501.976(18) is a statute that proscribes "unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices." Fla. Stat. § 501.203(3)(c); see, e.g., *State Farm Mut. Auto. Ins. Co. v. Performance Orthopaedics & Neurosurgery, LLC*, 315 F. Supp. 3d 1291, 1300 (M.D. Fla. 2018); *Parr v. Maesbury Homes, Inc.*, 2009 WL 5171770, at *8 (M.D. Fla. Dec. 22, 2009); *Meitis v. Park Square Enters., Inc.*, 2009 WL 703273, at *2 (M.D. Fla. Jan. 21, 2009).

Plaintiff's motion is **GRANTED** as to Count 4.

IV. Count 6—FDUTPA—Per se violation of Fla. Stat. § 316.2935

Florida law imposes clear duties on licensed dealerships with respect to emissions equipment. Section 316.2935(1)(b), Florida Statutes, requires that at the point of sale, a dealer certify in writing to the purchaser that the vehicle's air pollution control equipment has not been tampered with. The Florida Administrative Code, Rule 62-243.500(1)(d)(2), further mandates that dealers visually inspect and certify the presence of a catalytic converter before a vehicle is sold.

The undisputed record establishes that Defendant violated these duties. On March 9, 2023, Defendant executed a Vehicle Air Pollution Control Statement affirming that it had inspected the Audi and certified the catalytic converter was present. Twelve days later, however, an independent diagnostic inspection revealed that the catalytic converter was not present when the Vehicle was sold to Plaintiff. Defendant admitted that it is unaware whether the Vehicle was inspected before selling it to Plaintiff. It also maintains no written policies or documentation of such inspections, and concedes it lacks even basic knowledge of the catalytic converter's location, while simultaneously asserting it had no obligation to conduct the inspection, contrary to the plain statutory requirements.

These facts demonstrate that Gulf Coast falsely certified compliance with Florida's emissions laws, falsely misrepresented the condition of the Audi, and sold the vehicle in violation of mandatory statutory duties. Such conduct constitutes an unfair and deceptive practice actionable under FDUTPA. See *Viene v. Concours Auto Sales, Inc.*, 787 S.W.2d 814 (Mo. Ct. App. 1990) (holding that dealership committed unfair and deceptive act by misrepresenting that a vehicle passed state inspection and falsely claiming possession of the inspection certificate when, in fact, the vehicle had not passed inspection and required repairs).

Because a sale in violation of statutory emissions regulations constitutes a *per se* violation of FDUTPA under § 501.203(3)(c), and because Gulf Coast has identified no disputed issue of material fact, summary judgment in Plaintiff's favor on this claim is warranted.

Plaintiff's motion is **GRANTED** as to Count 6.

V. Count 7—Breach of Express Warranty

The Court finds genuine issues of material fact remain as to Count 7. Disputed questions exist concerning whether any express warranty was made regarding the vehicle's configuration, whether such representations extended beyond mere sales talk, and the scope and enforceability of any such warranty. Because these factual disputes must be resolved by the trier of fact, Plaintiff's motion is **DENIED** as to Count 7.

VI. Count 10—FCCPA Fla. Stat. § 559.72(9)

As to Count 10, there are disputes of material fact on whether Defendant knew, at the time of its communication, that the asserted right to collect the improperly disclosed pre-delivery service fee was nonexistent. The FCCPA requires proof of actual knowledge. *See Bentley v. Bank of Am., N.A.*, 773 F. Supp. 2d 1367, 1372 (S.D. Fla. 2011). Because the summary judgment record does not establish knowledge as a matter of law, Plaintiff's motion is **DENIED** as to Count 10.

VII. Damages

FDUTPA relief is cumulative of other remedies. § 501.213(1), Fla. Stat. Actual damages are generally measured by the difference between the market value of the goods as delivered and their market value as represented. *Tri-Cnty. Plumbing Servs., Inc. v. Brown*, 921 So. 2d 20, 22 (Fla. 3d DCA 2006) [31 Fla. L. Weekly D227a]; *Urling v. Helms Exterminators, Inc.*, 468 So. 2d 451, 454 (Fla. 1st DCA 1985). Although damages cannot be speculative, they may be based on reasonable estimates supported by competent evidence. *United States v. Killough*, 848 F.2d 1523, 1531 (11th Cir. 1988).

Here, Plaintiff's expert opined that Mr. Persaud sustained $4,050 in diminution-in-value damages, and Gulf Coast Auto offered no contrary expert evidence. Plaintiff also proved that Gulf Coast collected a $799 predelivery/document processing fee without statutory disclosure. Florida courts have held that consumers are entitled to refunds of such improperly disclosed fees. *Latman v. Costa Cruise Lines, N.V.*, 758 So. 2d 699, 703 (Fla. 3d DCA 2000) [25 Fla. L. Weekly D309a]; *Bowe v. Pub. Storage*, 106 F. Supp. 3d 1252, 1270 (S.D. Fla. 2015) [25 Fla. L. Weekly Fed. D197a]; *Morgan v. Pub. Storage*, 301 F. Supp. 3d 1237, 1252 (S.D. Fla. 2016).

As a result, Plaintiff is entitled to $4,849 in total FDUTPA damages ($4,050 diminution + $799 illegal fee). Importantly, at the September 25, 2025 hearing, Defendant consented to this damages figure, removing any dispute over the amount. These damages are cumulative under § 501.213(1), Fla. Stat.

VIII. Injunctive Relief—Fla. Stat. § 501.211(1)

Section 501.211(1), Florida Statutes, authorizes "[a]nyone aggrieved" by a FDUTPA violation to obtain declaratory and injunctive relief. Unlike traditional injunction standards, FDUTPA does not require proof of irreparable harm or a showing of likelihood of future injury. *Gastaldi v. Sunvest Communities USA, LLC*, 637 F. Supp. 2d 1045, 1057-58 (S.D. Fla. 2009); *Wyndham Vacation Resorts, Inc. v. Timeshares Direct, Inc.*, 123 So. 3d 1149, 1152 (Fla. 5th DCA 2012) [37 Fla. L. Weekly D2168a]. Courts construe the term "aggrieved" broadly to include anyone who has been treated unfairly

or deceptively. *Ahearn v. Mayo Clinic*, 180 So. 3d 165, 171-72 (Fla. 1st DCA 2015) [40 Fla. L. Weekly D2502d].

The undisputed record establishes that Plaintiff is an aggrieved consumer under FDUTPA. Gulf Coast misrepresented the vehicle's model and performance attributes, charged an illegal predelivery fee without the required statutory disclosure, and certified emissions compliance despite the absence of required equipment. These violations demonstrate a pattern of unfair and deceptive conduct. Plaintiff is therefore entitled to permanent injunctive relief enjoining Gulf Coast from:

(a) advertising or selling vehicles using a model designation without verifying accuracy;

(b) charging predelivery service fees without including the statutory disclosure required by § 501.976(18); and,

(c) certifying emissions compliance under § 316.2935 without conducting and documenting a contemporaneous visual inspection of required components.

IX. Attorneys' Fees - Fla. Stat. § 501.2105

Pursuant to section 501.2105, Florida Statutes, a prevailing plaintiff under FDUTPA is entitled to recover reasonable attorney's fees and costs. Because Plaintiff has prevailed on Counts 1, 2, 4, and 6, the Court finds that he is entitled to an award of fees and costs.

The Court reserves jurisdiction to determine the reasonable amount following proper motion and supporting materials.

Accordingly, it is ADJUDGED and ORDERED:

a) Plaintiff's Renewed Motion for Partial Summary Judgment (DIN 243) is **GRANTED IN PART** and **DENIED IN PART** as set forth above.

b) Final summary judgment on liability and damages is **ENTERED** for Plaintiff and against Gulf Coast Auto Brokers, Inc. on Counts 1, 2, 4, and 6.

c) Plaintiff is **ENTITLED** to recover his reasonable attorney's fees and costs under § 501.2105, Florida Statutes, and jurisdiction is **RESERVED** to determine the amount; jurisdiction is **RESERVED** to liquidate fees and costs and to enforce this Order.

d) Plaintiff is **AWARDED** actual damages as stated herein

e) Injunctive relief under § 501.211(1) is **ENTERED** as stated above.

f) A separate judgment incorporating the above shall be entered.

g) Plaintiff's Motion is **DENIED** as to Counts 7 and 10.

h) All remaining claims and deadlines not addressed herein remain in effect.

* * *

Paternity—Establishment—Gestational surrogacy—Declaratory action seeking pre-birth affirmation of parental status of couple who commissioned gestational surrogacy—Court declines to hold that provisions of surrogacy agreement asserting commissioning couple's ownership of unborn child are valid—However, petition is granted where it is possible to sever offending provisions that do not go to heart of agreement, couple's parental status under remaining provisions of agreement is clear, and remaining provisions are otherwise compliant with statute governing surrogacy contracts

IN RE: B.L.C., A MINOR CHILD. Circuit Court, 17th Judicial Circuit in and for Broward County. Case No. FMCE25013968 (41). Division Weiss. August 14, 2025. Marlon J. Weiss, Judge.

ORDER GRANTING IN PART, AND DENYING IN PART, PETITION FOR PRE-BIRTH DECLARATORY ORDER AFFIRMING PARENTAL STATUS

THIS CAUSE came before the Court upon an Agreed Petition for Pre-Birth Declaratory Order Affirming Parental Status. This Court having reviewed the Petition and its pertinent attachments, including the gestational surrogacy agreement, affidavits of consent by the surrogate and her husband, and medical affidavit, and having been otherwise advised in the premises, ORDERS and ADJUDGES as follows:

INTRODUCTION

In this declaratory action, Petitioners ask this Court to place its imprimatur on a surrogacy agreement that is predicated in part on a description of an unborn child as "contractually" "that of" and "belonging to" the commissioning couple, thereby affirming their parental status. For reasons elaborated more fully below, the Court cannot conclude in the backdrop of declaratory relief that Florida law is absent from ambiguity on the question of whether parties may assert contractual ownership of an unborn child. The Court does not feel comfortable making the bold declaration that such provisions are valid, and declines to do so.

Although this problem infects the surrogacy agreement, it does not end the Court's inquiry. The Court must next evaluate, as a matter of contractual validity, whether the offending provisions may be severed from the other provisions sufficient to achieve clarity on the question of parental status. Because the Court concludes that it is possible to do so—based on the relinquishment of parental rights by the gestational surrogate and agreement by the commissioning couple to accept custody of and to assume full parental responsibilities for the child, together with all other requirements of §742.15 appearing to be in proper form—the Petition will be granted to this extent.

DISCUSSION

Petitioners are a legally-married same-sex male couple from France. On December 7, 2024, Petitioners entered into a gestational surrogacy agreement with a surrogate and her husband to provide a means for Petitioners to become sole legal parents to a child through assisted reproductive technology, specifically, in vitro fertilization of an anonymously donated egg with sperm from either of the Petitioners, to be implanted to the surrogate for carrying and delivery of a child genetically unrelated to the surrogate. Based on that arrangement, a child was conceived, who is due to be born within the next several months.

The surrogacy agreement has several notable provisions. Relevant here, it provides as follows:

2.2 The Surrogate and her Husband represent that they believe, intend and agree that ***any Child conceived pursuant to this Agreement is*** legally, morally, biologically, ***contractually*** and ethically ***that of the Commissioning Couple***, and should be raised by the Commissioning Couple without any interference or otherwise by the Surrogate or her Husband, whatsoever.

25.6 In contemplation of birth the ***Commissioning Couple and/or their attorney may request an Affidavit***, statement or medical records from the IVF Physician ***confirming transfer of the embryos) belonging to the Commissioning Couple***, Affidavits from the Commissioning Couple and the Surrogate, and her Husband if necessary, confirming the Commissioning Couple's relationship to the Child, and DNA documentation regarding parentage of the Child.

(Petition, Ex. A (emphasis added)).

The medical affidavit referenced by 25.6, attached to the Petition, provides further:

I completed an in-vitro fertilization embryo transfer wherein I transferred one of the ***embryos described above, legally belonging and biologically related to [Commissioning Couple]***, into the uterus of [surrogate], who did not contribute any genetic material to the embryo.

(Petition, Ex. B ¶ 6 (emphasis added)). The surrogate's affidavit similarly provides:

> I freely and voluntarily entered into a Gestational Surrogacy Agreement with . . . Commissioning Couple . . . wherein ***I agreed to become pregnant and act as a gestational surrogate for the Commissioning Couple, to carry to term a fetus or fetuses from embryos legally belonging and biologically related to the Commissioning Couple*** and transferred into my uterus for implantation through a process of In Vitro Transfer.

(Petition, Ex. C. ¶ 2 (emphasis added)).

Against that backdrop, a declaratory action under Fla. Stat. §86.021 requires the following proof:

> [1] a bona fide, actual, present practical need for the declaration; [2] that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; [3] that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; [4] that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; [5] that the antagonistic and adverse interest [sic] are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

Bartsch v. Costello, 170 So. 3d 83, 88 (Fla. 4th DCA 2015) [40 Fla. L. Weekly D1414a] (quoting *Olive v. Maas,* 811 So. 2d 644, 657-58 (Fla. 2012) [33 Fla. L. Weekly S694a]).

Put differently, "the claimant must demonstrate that it is in doubt as to the existence or nonexistence of some right or status, and that it is entitled to have such doubt removed." *Yorty v. Realty Inv. & Mortg. Corp.,* 938 So. 2d 1, 4 (Fla. 3d DCA 2006) [31 Fla. L. Weekly D1680d]; *see also Mandarin Lakes Cmty. Ass'n v. Mandarin Lakes Neighborhood Homeowners Ass'n,* 322 So. 3d 1196, 1199 (Fla. 3d DCA 2021) [46 Fla. L. Weekly D1293a] (stating that a declaratory action involves "the resolution of a doubt").

Whether a contracting party can assert an ownership interest over an unborn child is not a settled question in Florida law. Indeed, recent case law confirms this. *See In re Advis. Op. to the AG re: Limiting Gov't Interference with Abortion,* 384 So. 3d 122, 137 n.3 (Fla. 2024) [49 Fla. L. Weekly S89a] (recognizing "the unsettled nature" of whether "preborn human beings" are "constitutional persons"); *see also id.* at 143-144 (Grosshans, J., dissenting) (acknowledging that the Florida Supreme Court has "failed to address whether the rights guaranteed in article I, section 2 apply to the unborn").

And, a declaratory action based on unsettled contractual interests must necessarily fail. This is particularly so given the "clear and convincing" standard usually applied to determinations of parentage under Chapter 742 and elsewhere. *See* Fla. Stat. §742.031; *see also Gingola v. Fla. Dep't of HRS,* 634 So. 2d 1110, 1111 (Fla. 2d DCA 1994) ("The party seeking to establish paternity bears the burden of proof by clear and convincing evidence."); *Williams v. Estate of Pender,* 738 So. 2d 453, 456 (Fla. 1st DCA 1999) [24 Fla. L. Weekly D1779b] (holding that in construction of adoption agreements, "the 'clear and convincing' standard is the correct one"); *In Interest of A.D.J.,* 466 So. 2d 1156, 1158 (Fla. 1st DCA 1985) (stating "to lawfully enter an order severing parental rights, the court must have clear and convincing evidence").

To this end, while authority addressing the juridical status of unborn children is sparse in Florida, particularly in the wake of *Dobbs v. Jackson Women's Health Organization,* 597 U.S. 215 (2022) [29 Fla. L. Weekly Fed. S486a], it must be emphasized that Article I, section 2, of the Florida Constitution expressly states that "[a]ll natural persons . . . are equal before the law and have inalienable rights," including "the right to enjoy and defend life." Art. I, § 2, Fla. Const. As Justice Francis noted in the distinct (but no less instructive) context of abortion, "the exercise of a 'right' to an abortion literally results in a devastating infringement on the right of another person . . . our Florida Constitution recognizes that 'life' is a 'basic right' for '[a]ll natural persons.' " 384 So. 3d at 147 (Francis, J., dissenting) (citing Art. I, § 2, Fla. Const.); *id.* (further opining that "[o]ne must recognize the unborn's competing right to life and the State's moral duty to protect that life").

According to some scholars, Justice Francis's conclusion that the constitutional text "[a]ll natural persons" includes the unborn is consistent with its original public meaning. *See* David Thompson, *Basic Rights and Initiative Petition 23-07: Are the Preborn "Natural Persons" Under the Florida Constitution?* Available at SSRN: https://ssrn.com/abstract=4753223 (citing era-appropriate dictionaries, concluding that when the phrase "natural persons" entered the Florida Constitution in 1968, "the public understood the words 'natural person' and 'person,' as used in Article I, sections 2 and 9, to mean a living human being"). Thompson further cogently argues that historical context corroborates the plain meaning of the text. In particular: that the genesis of the "natural person" phrase can be traced to Florida's original 1868 constitution, by which the language of the basic rights provision was widely understood to "embrace the whole human family." *Id.* at 20. *See also* Joshua J. Craddock, *Personhood After Dobbs,* 74 Cath. U. L. Rev. 536 (2025) (arguing that when the Fourteenth Amendment of the U.S. Constitution was ratified in 1868, the word "person" had a settled public meaning that included "every human being").

Other commentators have pointed out that, if a preborn living human being is entitled to legal personhood, it goes without saying that such persons cannot be subject to contractual bartering or ownership. *See* Anthony Jose Sirven, *No Property In Man: A Fading Principle,* Texas Review of Law & Politics, Spring 2025, available at SSRN: https://ssrn.com/abstract=5211564.

For present purposes—that is, in the context of affirmative declaratory relief sought by parties possessing an elevated burden of proof, it suffices to say that there is significant ambiguity in Florida law as to whether certain contract provisions of the nature implicated in the surrogacy agreement here are valid. In other words, Petitioners cannot show the provisions are free from doubt. And while the ultimate line in questions of personhood is outside of the purview of this order, declaratory relief is improper with respect to such contract provisions in the current posture of this case.

This conclusion leaves open the question of whether the potentially invalid contractual provisions defeat the entire agreement, or may be severed. In this connection, the surrogacy agreement provides:

> SEVERABILITY: In the event that any provisions of this Agreement are deemed legally invalid or unenforceable, these provisions shall be deemed severable from the remainder of this Agreement and shall not cause the remainder of this Agreement to be considered invalid or unenforceable. If any of these provisions shall be deemed legally invalid because of their scope or breadth, then these provisions shall be deemed legally valid to the extent permitted by law.

(Petition, Ex. A ¶ 38).

In *Obolensky v. Chatsworth at Wellington Green, LLC,* 240 So. 3d 6, 9 (Fla. 4th DCA 2018) [43 Fla. L. Weekly D482a], the Fourth District (citing Florida Supreme Court precedent) explained that when a court is confronted with an illegal provision in an agreement, the question of severability turns on whether the offending provision impermissibly requires a court to rewrite the agreement. On the other hand, a contract may be upheld "where the illegal portion of the contract does not go to its essence, and where, with the illegal portion eliminated, there still remains of the contract valid legal promises on one side which are wholly supported by valid legal promises on the other." *Id.* (citing *Shotts v. OP Winter Haven, Inc.,* 86 So. 3d 456 (Fla.

2011) [36 Fla. L. Weekly S665b]); *cf. Gessa v. Manor Care of Fla., Inc.,* 86 So. 3d 484 (Fla. 2011) [36 Fla. L. Weekly S676a] (finding contract indivisible where objectionable "provisions constitute the financial heart of the agreement" and, if severed, the trial court would have difficulty determining that what remained was a valid contract).

Applying these tenets here, the Court concludes that the potential illegality of the provisions discussed above do not go to the "heart" of the surrogacy agreement such to preclude its enforcement in relevant part. That is because the remaining promises contained in the agreement are otherwise compliant with the requirements of Florida Statutes supporting the affirmation of parental status.

Gestational surrogacy is permitted by Florida law under 742.13, *et seq.* But a surrogacy agreement must meet the following requirements, *verbatim*:

> 742.15 Gestational surrogacy contract.—
>
> (1) Prior to engaging in gestational surrogacy, a binding and enforceable gestational surrogacy contract shall be made between the commissioning couple and the gestational surrogate. A contract for gestational surrogacy shall not be binding and enforceable unless the gestational surrogate is 18 years of age or older and the commissioning couple are legally married and are both 18 years of age or older.
>
> (2) The commissioning couple shall enter into a contract with a gestational surrogate only when, within reasonable medical certainty as determined by a physician licensed under chapter 458 or chapter 459:
>
> (a) The commissioning mother cannot physically gestate a pregnancy to term;
>
> (b) The gestation will cause a risk to the physical health of the commissioning mother; or
>
> (c) The gestation will cause a risk to the health of the fetus.
>
> (3) A gestational surrogacy contract must include the following provisions:
>
> (a) The commissioning couple agrees that the gestational surrogate shall be the sole source of consent with respect to clinical intervention and management of the pregnancy.
>
> (b) The gestational surrogate agrees to submit to reasonable medical evaluation and treatment and to adhere to reasonable medical instructions about her prenatal health.
>
> (c) Except as provided in paragraph (e), the gestational surrogate agrees to relinquish any parental rights upon the child's birth and to proceed with the judicial proceedings prescribed under s. 742.16.
>
> (d) Except as provided in paragraph (e), the commissioning couple agrees to accept custody of and to assume full parental rights and responsibilities for the child immediately upon the child's birth, regardless of any impairment of the child.
>
> (e) The gestational surrogate agrees to assume parental rights and responsibilities for the child born to her if it is determined that neither member of the commissioning couple is the genetic parent of the child.
>
> (4) As part of the contract, the commissioning couple may agree to pay only reasonable living, legal, medical, psychological, and psychiatric expenses of the gestational surrogate that are directly related to prenatal, intrapartal, and postpartal periods.

The surrogacy agreement here contains such requirements. The agreement confirms that the parents are a same-sex male couple that cannot have a child without medical assistance, thus meeting the requirements of (2)(a).[1] (Petition, Ex. A, Recital B). As to (3), the agreement contains provisions that the surrogate will remain the sole source of consent regarding clinical intervention and management of the pregnancy (Petition, Ex. A. ¶ 6.1); that the surrogate agrees to submit to reasonable medical evaluation and treatment and adhere to reasonable medical instruction (*id.* ¶ 6.1(a)); that the surrogate will relinquish all parental rights upon the birth of the child (*id.* ¶¶ 15, 25.1); that the commissioning couple agrees to accept custody of and to assume full parental rights and responsibilities for the child regardless of impairments (*id.* ¶¶ 6.3(c), 24.2); and that surrogate agrees to assume parental rights and responsibilities for the child born to her if the child is genetically related to her but not related to either of the commissioning parents. Finally, as to (4), the contract stipulates that only reasonable living and medical expenses have been provided and the Court concludes that the amounts reflected are consistent with the requirements of law.

CONCLUSION

In sum, the Court concludes that Petitioners' parental status under the surrogacy agreement is clear and that the contract is otherwise compliant with §742.15. The Petition further meets the standard for declaratory relief under §86.021, with the exceptions noted above. Accordingly, it is

ORDERED AND ADJUDGED that the Petition is GRANTED IN PART AND DENIED IN PART. The Petition is granted insofar as the parental status of Petitioners is affirmed, but denied to the extent that any such status derives from the assertion of a contractual ownership interest over the unborn baby. A declaratory judgment will be entered by further order of the Court.

IT IS FURTHER ORDERED that pursuant to Fla. Stat. §742.16(9), Fla. R. Jud. Admin. 2.420(b)(4), (d)(1)(B), and 2.425, and the limited waivers of confidentiality contained in the surrogacy agreement, this Order shall not be deemed confidential inasmuch as it contains no personally identifying information regarding the minor unborn child or the petitioning parties. *See* Rule 2.420(b)(4) (stating that "[t]o the extent reasonably practicable, restriction of access to confidential information shall be implemented in a manner that does not restrict access to any portion of the record that is not confidential."); Rule 2.425 (permitting disclosure of designated sensitive information in limited or truncated format).

[1]The Court notes that while the plain text of §742.15(2)(a) and §742.13(2) requires that a commissioning couple include a "mother" and "father," controlling case law has interpreted this definition to apply equally to same-sex couples. *D.M.T. v. T.M.H.,* 129 So. 3d 320, 327 (Fla. 2013) [38 Fla. L. Weekly S812b] (concluding no "rational basis" existed on the facts presented to differentiate a same-sex couple from a heterosexual couple vis-à-vis their intentions in using assisted reproductive technology to conceive a child).

* * *

Torts—Punitive damages—Civil procedure—Amended complaint—Premature request for punitive damages filed before plaintiff sought leave to amend or made evidentiary proffer required by section 768.72(1) is stricken from amended complaint—Demand for attorney's fees is stricken based on failure of movant to identify statutory or contractual basis for demand—Demand for jury trial is stricken where there is clear, unambiguous, and enforceable waiver of jury trial—Extraneous and immaterial ChatGPT prompt is stricken

SOCIETA IMMOBILIARE LLC, Plaintiff, v. THE TAVERNA COLLECTIONS LLC, Defendant. Circuit Court, 17th Judicial Circuit in and for Broward County. Case No. CACE25004078. Division 14. October 9, 2025. N. Hunter Davis, Judge. Counsel: Edward L. Blair, Blair Legal Solutions LLC, Orlando, for Plaintiff. Joshua Feygin, Sue Your Dealer—A Law Firm, Hollywood, for Defendant.

ORDER GRANTING DEFENDANT'S OMNIBUS MOTION TO STRIKE

THIS CAUSE came before the Court for hearing on October 9, 2025, on Defendant's Omnibus Motion to Strike ("Motion") [DE 23] directed to the Plaintiff's Amended Complaint. [DE 7]. Edward Bair IV, Esq. appeared on behalf of Plaintiff. Joshua Feygin, Esq. appeared on behalf of Defendant. The Court, having reviewed the motion, the

Defendant's Response [DE 32], the record, and the arguments of counsel, and being otherwise fully advised, finds as follows:

Through the Motion, Defendant moved to strike certain improper and immaterial portions of Plaintiff's Amended Complaint pursuant to Rule 1.140(f), Florida Rules of Civil Procedure. The motion addressed four distinct matters: (1) the premature demand for punitive damages; (2) the statutorily and contractually unsupported demand for attorney's fees; (3) the improper demand for jury trial despite a written waiver; and (4) the inclusion of an extraneous ChatGPT prompt within the pleading.

The Court notes that Plaintiff filed a Response at DE No. 32 opposing each distinct request for relief. The Court further notes that Defendant attempted in good faith to resolve the matter prior to filing the Motion, as evidenced by the conferral correspondence attached to the Motion as Exhibit B.

As to the request to strike the demand for punitive damages, the Court finds that the Plaintiff has not sought leave or made the evidentiary proffer required by section 768.72(1), Florida Statutes. The statutory right not to be subjected to a claim for punitive damages until the Court finds a reasonable evidentiary basis is well settled law. *Holmes v. Bridgestone/Firestone, Inc.*, 891 So. 2d 1188 (Fla. 4th DCA 2005) [30 Fla. L. Weekly D328a]; *Henn v. Sandler*, 589 So. 2d 1334 (Fla. 4th DCA 1991); *Estate of Despain v. Avante Group, Inc.*, 900 So. 2d 637 (Fla. 5th DCA 2005) [30 Fla. L. Weekly D813b]. Plaintiff's Response specifically cites to Fla. Stat. 768.72(1) and acknowledges that leave to amend accompanied with a reasonable evidentiary proffer is required before pleading punitive damages. Response, p. 2. Plaintiff conceded at hearing that the request for punitive damages was premature and that leave must first be obtained. The demand for punitive damages is therefore stricken without prejudice for Plaintiff to properly seek leave and make an appropriate evidentiary showing pursuant to section 768.72, Florida Statutes.

As to the request to strike the demand for attorney's fees, Defendant argued, and the Court agrees, that under the "American Rule" attorney's fees may only be awarded when authorized by statute or contract. *State Farm Fire & Cas. Co. v. Palma*, 629 So. 2d 830, 832 (Fla. 1993). Plaintiff identified no such statutory or contractual basis in the Response. When asked at the hearing, Plaintiff conceded that none was pled. The demand for attorney's fees is therefore stricken.

As to the demand for jury trial, Defendant relied upon the written Buyer's Order, attached to the Motion as Exhibit A, which contains a clear, unambiguous and enforceable jury trial waiver. There was no dispute that the Plaintiff executed the Buyer's Order. Plaintiff offered no legal authority to support avoidance of that provision. In light of the complete absence of any legal basis to avoid operation of the provision being identified or advanced by Plaintiff at hearing on the instant Motion, the Court finds that the waiver is valid and enforceable, and the demand for jury trial is stricken accordingly.

As to the inclusion of a *ChatGPT* prompt within the Amended Complaint, the Court finds that such material is extraneous and immaterial, rendering it a proper subject of a motion to strike under Rule 1.140(f). At the hearing, Plaintiff advanced no argument to the contrary and instead moved *ore tenus* for leave to amend to omit the prompt. The Court grants that request solely for the limited purpose of omitting the ChatGPT prompt on page 10 of the amended complaint. Plaintiff shall file a Second Amended Complaint consistent with this ruling within ten (10) days.

Finally, Plaintiff's *ore tenus* motion for reconsideration of the Court's prior order on Defendant's motion for protective order was not properly noticed and is denied without prejudice.

Accordingly, it is **ORDERED AND ADJUDGED** that:

1. Defendant's Omnibus Motion to Strike is **GRANTED** in all respects consistent with the Court's rulings, as follows:

a. Plaintiff's demand for punitive damages is **STRICKEN** without prejudice for Plaintiff to seek leave under section 768.72, Florida Statutes.

b. Plaintiff's demand for attorney's fees is **STRICKEN**.

c. Plaintiff's demand for jury trial is **STRICKEN**.

d. Plaintiff's superflous *ChatGPT* prompt at page 10 of the Amended Complaint is **STRICKEN.**

2. Plaintiff's *ore tenus* motion for leave to amend is **GRANTED,** solely as it relates to deletion of the *ChatGPT* prompt on page 10 of the Amended Complaint, and Plaintiff shall file a Second Amended Complaint limited to incorporating that revision within ten (10) days of this Order.

3. Furthermore, Plaintiff's *ore tenus* motion for reconsideration of the Court's order on Defendant's Motion or Protective Order [DE 49] is **DENIED WITHOUT PREJUDICE**.

* * *

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COUNTY COURTS

Insurance—Property—Homeowners—Windstorm loss—Coverage—Post-loss obligations—Supplemental claim—Breach of contract action alleging that insurer underpaid claim for loss to dwelling roof—Summary judgment is entered in favor of insurer where insurer adjusted claim and notified insureds that estimate of both actual cash value and replacement cash value of loss were less than deductible, and insureds failed to comply with policy requirement that they submit supplemental ACV claim or competing ACV estimate prior to filing suit

BRANDON GILLETTE and MISTY GILLETTE, Plaintiffs, v. AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA, Defendant. County Court, 1st Judicial Circuit in and for Okaloosa County. Case No. 2023 CC 002675 C. March 9, 2025. Jim Ward, Judge. Counsel: Holli Wares, Habermehl Millard Goss, LLP, Winter Park, for Plaintiffs. Jake Roth and Jose Campos, Cole, Scott & Kissane, P.A., Ft. Lauderdale, for Defendant.

ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE having come before the Court for remote hearing on January 6, 2025, on Defendant's Motion for Summary Judgment and the Court having heard arguments of counsel, and being otherwise advised in the Premises, it is hereupon:

ORDERED AND ADJUDGED that:

1. Defendant's Motion for Summary Judgment in **GRANTED**.

2. The Court finds that Defendant has showed the non-existence of any genuine dispute as to any material fact based on the record evidence and legal authority presented, and that all reasonable inferences to be drawn therefrom uncontrovertibly establish that Defendant is entitled to final judgment as a matter of law, for the following reasons:

3. Under Florida's new standard for summary judgment, the correct test for the existence of a genuine factual dispute is whether "the evidence is such that a reasonably jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Under Florida's new rule, "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, os that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007) [20 Fla. L. Weekly Fed. S225a]. In Florida, the new Rule 1.51- "requires summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *See In Re: Amendments To Florida Rule of Civil Procedure 1.510*, No. SC20-1490 (Dec. 31, 2020) [46 Fla. L. Weekly S6a] (per curium) (internal quotations and citations omitted).

4. This is a breach of contract action involving a first-party property homeowners insurance claim dispute where the reported date of loss is June 18, 2023. The claim was reported as wind damage to the subject property's roof.

5. Based on the undisputed record evidence and uncontested material facts relevant to this summary judgment proceeding, it is conclusively established that prior to filing suit, the Plaintiff made a claim to Defendant, which was assigned Claim Number CHO-00167635. Defendant immediately commenced its investigation of the Plaintiff's claim by assigning a field adjuster to conduct an inspection of the property on September 7, 2023.

6. The field adjuster's inspection revealed covered damages, resulting in a Replacement Cost Value ("RCV") estimate of $1,116.77 and an Actual Cash Value ("ACV") estimate of $711.50, which accounted for $405.27 of recoverable depreciation. Defendant advised the Plaintiff that coverage was being opened and provided the relevant estimate; however, Defendant also advised the Plaintiff that the policy's $2,500.00 deductible is higher than both the RCV and ACV estimate, so no payment was issued to the Plaintiff.

7. Plaintiff's counsel later provided Defendant with a Letter of Representation, advising Defendant that Plaintiff is seeking recovery for a full roof replacement, but there was no RCV or ACV estimate provided to Defendant to support the claim.

8. Defendant was not provided with any estimate—besides the field adjuster's estimate—until the Plaintiffs submitted a Notice of Intent to Initiate Litigation against Defendant, which attached an estimate created by a company called Ideal Home Solutions, LLC.

9. Notably, the Ideal Home Solutions, LLC estimate was in the amount of $23,469.77 and clearly shows on its face that it is an estimate calculated solely on a Replacement Cost Value basis only, and it does not contain any estimation based upon ACV, as it does not deduct any depreciation. *See Siegel v. Tower Hill Signature Ins. Co.*, 225 So. 3d 974, 975 n. 1, 978 (Fla. 3d DCA 2017) [42 Fla. L. Weekly D1891c] (ACV is simply the RCV minus depreciation).

10. Defendant's instant Motion moves for summary judgment, arguing that it could not have conceivably breached the policy contract by acknowledging coverage for ACV pursuant to the terms of the policy, and at no time thereafter did the Plaintiff ever submit any supplemental ACV claim or competing ACV estimate to Defendant so as to dispute Defendant's ACV coverage determination prior to suit being filed.

11. Defendant's argument is premised upon the following provisions in Plaintiff's policy:

> **DEFINITIONS**
>
> **2.** "Actual Cash Value" means the cost to repair or replace covered property, at the time of loss or damage, whether that property has sustained partial or total loss or damage, with material of like kind and quality, subject to a deduction for deterioration, depreciation and obsolescence as determined by us.
>
> **SECTION I—CONDITIONS**
>
> **3. Loss Settlement.** Covered property losses are settled as follows:
>
> **b.** Buildings under COVERAGE A - Dwelling or COVERAGE B—Other Structures at replacement cost without deduction for depreciation, subject to the following:
>
> **(4)** For losses under COVERAGE A—Dwelling, and for losses to buildings covered under COVERAGE B—Other Structures, we will pay the actual cost to repair or replace subject to **b.(1)** above. However, we will initially pay no more than the "actual cash value" of the insured loss, less any applicable deductible. We will pay any remaining amounts necessary to perform such repairs as work is performed and expenses are incurred.
>
> **8. Suit Against Us.**
>
> **a.** No action can be brought unless the Section I policy provisions have been complied with and the action is started within 5 years from the date of loss.
>
> *Underlined emphasis added.*

12. Similarly, Florida Statute 627.7011(3) (2021) states:

> **(3)** In the event of a loss for which a dwelling or personal property is insured on the basis of replacement costs:
>
> (a) For a dwelling, the insurer must initially pay at least the actual cash value of the insured loss, less any applicable deductible. The insurer shall pay any remaining amounts necessary to perform such repairs as work is performed and expenses are incurred. If a total loss of a dwelling occurs, the insurer shall pay the replacement cost coverage without reservation or holdback of any depreciation in value, pursuant to s. 627.702.

Underlined emphasis added.

13. Florida law is clear that an insurer's "decision to pay the amount of its estimate (less the deductible) and then consider supplemental claims for additional damages discovered during or arising from the repairs [is] consistent with the terms of its insurance policy. *Slayton v. Universal Prop. & Cas. Ins. Co.*, 103 So. 3d 934, 936 (Fla. 5th DCA 2012) [37 Fla. L. Weekly D2748a]. An insured cannot claim breach of contract when the carrier extended coverage and made a payment for the loss unless and until the insured has cause to and actually seeks additional amounts or coverage from its insurer. *Id. See also Goldberg v. Universal Prop. & Cas. Ins. Co.*, 302 So. 3d 919, 923-926 (Fla. 3d DCA 2017) [45 Fla. L. Weekly D2118b]; *Vazquez v. Southern Fidelity Prop. & Cas. Ins., Inc.*, 230 So. 3d 1242 (Fla. 3d DCA 2017) [42 Fla. L. Weekly D2174b].

14. When a homeowner's insurance policy calls for the initial payment of Actual Cash Value in the event of a loss, as is the case with the Plaintiff's policy, a genuine issue of material fact is created precluding summary judgment when the insurer and the insured dispute the amount of Actual Cash Value. *See Vazquez* at 1243; *Siegel v. Tower Hill Signature Ins. Co.*, 225 So. 3d 974, 978 (Fla. 3d DCA 2017) [42 Fla. L. Weekly D1891c]. Notably, in both *Vazquez* and *Seigel* the insured presented its insurer with a competing estimate of the Actual Cash Value prior to initiating suit, which was and could be the only evidence of a genuine issue of material fact as to the ACV of the loss. Naturally, a different conclusion is reached when an insured does not present a competing estimate of the Actual Cash Value prior to initiating suit. *Goldberg v. Universal Prop. & Cas. Ins. Co.,* 302 So. 3d 919 (Fla. 3d DCA 2017) [45 Fla. L. Weekly D2118b].

15. In *Goldberg*, the court granted summary judgment in favor of the insurer on the basis that the insured did not dispute the Actual Cash Value, as adjudicated by its insurer, prior to initiating suit. *Id.* "While an insurer's unilateral determination of the cash value of a loss does not entitled it to a summary judgment in the fact of a competing estimate of damages, the insurer should not be deemed to have breached the contract where it accepted coverage and paid the only estimate it received of the actual cash value of the loss." *Id*. (underlined emphasis added). Notably, the insured in *Goldberg* claimed to have "a proposal which was higher" and failed to provide same after the carrier requested a copy. *Id.* At 921-22.

16. State and Federal courts across Florida have applied the *Goldberg* standard requiring an insured to actually dispute the insurer's initial Actual Cash Value payment before claiming breach of contract based on that payment being supposedly insufficient. *See Hurley v. Avatar Prop. & Cas. Ins. Co.*, 303 So. 3d 1284 (Fla. 5th DCA 2020) [45 Fla. L. Weekly D2405a]; *Am. Coastal Ins. Co. v. Ironwood, Inc.*, 330 So. 3d 570, 573 (Fla. 2d DCA 2021) [46 Fla. L. Weekly D2315a] (claim for damages to windows and doors related to the same storm but not the original claim for solely roof damages was a "supplemental claim" that must be submitted to the carrier before the insured can invoke appraisal on the window and door claim); *St. Michaels Anglican Cath. Church of Panama City Fla. Inc. v. Church Mut. Ins. Co.*, 2021 WL 6882431 (N.D. Fla. 2021); *Great Lakes Ins. SE v. Concourse Plaza*, 2022 WL 3370785 (S.D. Fla. 2022) (discussing *Goldberg* in depth as support for a ruling that a request for additional payment is a "supplemental claim" that can be time-barred by FS 627.70132); *Short v. Universal Prop. & Cas. Ins. Co.*, 348 So. 3d 2 (Fla 4th DCA 2022) [47 Fla. L. Weekly D2020a].

17. An insured cannot dispute the Actual Cash Value payment by simply demanding the Replacement Cost Value. *Buckley Towers Condo., Inc. v. QBE Ins. Corp.*, 395 F. App'x 659 (11th Cir. 2010). Before a dispute over the Replacement Cost Value can be entertained in court, the Replacement Cost Value coverage must have been triggered, which typically does not occur until actual repairs or replacement have been completed. *Id.* at 663. *See also, Ceballo v. Citizens Prop. Ins. Corp.*, 967 So. 2d 811, 815 (Fla. 2007) [32 Fla. L. Weekly S566a] (Florida "[c]ourts have almost uniformly held that an insurance company's liability for replacement cost does not arise until the repair or replacement has been completed." (citations omitted).

18. Likewise, the incidentals of hypothetical repairs, such as matching adjacent materials, cannot be used in the calculation of ACV—only the *damaged* property counts. *Milhomme v. Tower Hill Signature Ins. Co.*, 227 So.3d 724, 725 (3DCA 2017) [42 Fla. L. Weekly D2029a] (the insured prevailed because its pre-suit estimate disputed the ACV amount of "the original casualty event and the amounts contended to be necessary to repair and restore the direct physical loss to the covered property.") (underlined emphasis added). *See also Vazquez v. Citizens Prop. Ins. Corp.*, 304 So. 3d 1280, 1285 (Fla. 3d DCA 2020) [45 Fla. L. Weekly D642a] (affirming matching costs were not part of actual cash value of damage to homeowner's residence, as would have required insurer to cover matching costs prior to repairs being made, where plain language of homeowner's insurance policy and statutes regulating replacement cost coverage and matching costs limited initial payment of actual cash value of loss to direct physical loss).

19. Here, in this case, while acknowledging coverage, Defendant sent Plaintiffs a loss estimate for both ACV and RCV, totaling $1,116.77 and $711.50 respectively, and stating that the amount of the covered loss fell below the applicable $2,500 policy deductible. Plaintiffs, however, specifically responded with an RCV-only estimate. Based on all record evidence, this amount, unequivocally represented RCV and not ACV. Plaintiffs did not submit any competing ACV estimate prior to suit; they submitted only an RCV estimate, and then after Defendant did not pay the full amount of Plaintiffs' RCV-only estimate, Plaintiffs sued for breach of contract. Under the plain language of the policy, Defendant was only required to initially pay the ACV, which Plaintiffs never brought into dispute prior to filing the instant lawsuit. Since there was only one ACV estimate—its own—Defendant was entitled to rely on same in investigating and adjusting Plaintiffs' claim pursuant to *Goldberg.*

20. This Court specifically finds that, pursuant to *Goldberg*, the Plaintiffs failed to submit a competing ACV estimate to Defendant prior to initiating the instant lawsuit, thereby breaching the policy's Suit Against Us provision.

21. The Court further finds that the undisputed material facts and record evidence conclusively establishes the non-existence of any genuine dispute of fact that the Defendant did not breach its insurance policy contract with Plaintiffs prior to the filing of this suit, and therefore, the Court hereby grants final summary judgment in favor of the Defendant and against the Plaintiffs.

WHEREFORE, the Court hereby enters final judgment in favor of the Defendant, AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA, and against the Plaintiffs, BRANDON GILLETTE AND MISTY GILLETTE. The Plaintiffs shall take nothing in this action, and the Defendant may go hence without day. The Court reserves jurisdiction on Defendant's entitlement to attorneys' fees and costs pursuant to applicable Florida law.

* * *

Landlord-tenant—Possession—Tenants' emergency motion for restored possession is granted—Relationship between parties is landlord-tenant relationship, and tenants did not make unauthorized entry onto property—Conditions of tenancy set

TERESA KELLY, ROBERT HERRIN and CASEY STELLY, Plaintiffs, v. WILLIAM DAVID BRICE, Defendant. County Court, 2nd Judicial Circuit in and for

Gadsden County. Case No. 25000093SCA. February 6, 2025. Kathy Garner, Judge. Counsel: Robert G. Churchill, Jr., Churchill Law Group, PLLC, Tallahassee, for Plaintiffs. William David Brice, Pro se, Defendant.

JUDGMENT TO RESTORE POSSESSION

This action was heard on February 5, 2025 at a duly noticed hearing on Plaintiffs TERESA KELLY, ROBERT HERRIN and CASEY STELLY's Emergency Statement of Claim and Demand for Judgment of Possession regarding the dwelling located at 404 North Adams Street, Quincy, FL 32351.

The action filed included claims for monetary and statutory damages and emergency recovery of possession of the dwelling pursuant to Florida Statute §82.036. That statute provides relief for a claimant, upon proper evidence, to be "restored to possession of the real property and . . . actual costs and damages incurred, statutory damages equal to triple the fair market rent of the dwelling, court costs, and reasonable attorney fees." Fla. Stat. 82.036(6).

This Court having reviewed the Emergency Claim, having heard testimony and received evidence at a duly-noticed emergency hearing, and being otherwise fully advised in the premises, FINDS:

1. There was a relationship between the parties that is best understood as a Landlord-Tenant relationship, based on the information provided by all parties;

2. There was not an unauthorized entry by the Plaintiffs onto the Defendant's property;

THEREFORE, IT IS ORDERED AND ADJUDGED:

1. The emergency motion for restored possession is GRANTED. Plaintiffs TERESA KELLY, ROBERT HERRIN and CASEY STELLY are entitled to recover possession of the property located at 404 North Adams Street, Quincy, FL 32351, on the conditions set forth in this paragraph, for which let execution issue.

a. The condition on the entitlement to recovery of possession described above is that Plaintiffs shall pay to Defendant, no later than 3:00pm on Friday, February 7, 2025, the total of $3600.00, which represents full rental payment for the periods of January 15, 2025 through January 31, 2025, and February 1, 2025 through February 28, 2025. The payment shall be made via cashier's check or money order or cash, and shall be paid immediately prior to when the Plaintiffs recover possession of the dwelling, by 3:00 pm on February 7, 2025.

2. After February, 2025, the Plaintiffs' monthly rent shall be $2500.00 per month, and shall be due and payable on the 1st day of each month. If the plaintiffs are still living in the property after February 28, 2025, $2500.00 in the form of a money order, cashier's check or cash, must be paid to the defendant on or before March 1, 2025 by 3:00 p. m.

3. After entrance of the court's order, all amendments to the court order must be made in writing, signed by all adult parties and must be filed with the Gadsden County Clerk's office.

4. Other aspects of the parties' living arrangement shall be as follows:

a. The temperature in the upstairs portion of the home (which is controlled by a thermostat accessible only to the Defendant) shall be maintained between 65 degrees and 75 degrees Fahrenheit.

b. The Plaintiffs are entitled to the use of the washing machine and dryer in the home, (this use exclusively by Plaintiff TERESA KELLY) but shall utilize it only when the Defendant is present or with the Defendant's express permission.

c. Any firearms owned or possessed by the Plaintiffs must be kept in a safe manner, and not openly accessible in the home.

d. The Plaintiffs' dogs shall be kept outside the home, in a fenced yard which shall be kept closed so that the dogs are not free to leave the property.

e. The Defendant shall have exclusive use of, and (except as otherwise provided herein in paragraph 4b, above), access to the master bedroom and the downstairs "turret room" parlor for his use.

f. The parties shall maintain their living quarters in reasonable cleanliness and to the standard of cleanliness in which the home existed prior to their occupancy.

g. The Plaintiffs shall commit no waste, destruction, vandalism, theft or other damage to the Defendants property, including the structure of the dwelling and the property within the dwelling.

5. The Court takes no action as to the remaining monetary dispute in this case, which shall be set for trial or other disposition at the request of the parties.

6. The Court reserves jurisdiction on the issue of attorney fees and costs.

* * *

Landlord-tenant—Eviction—Lease purchase agreement—Jurisdiction—County court lacks jurisdiction where funds paid toward purchase price of property on which defendants reside exceed threshold limits of section 83.42(2)—Controversy is within exclusive original jurisdiction of circuit court

TRACY TAYLOR, Plaintiff, v. CANDICE WALKER and JEREK JACKSON, Defendants. County Court, 5th Judicial Circuit in and for Marion County. Case No. 2024 SC 5851. December 29, 2024. Lori Cotton, Judge. Counsel: Kristopher Vanderlaan, Ocala, for Plaintiff. Robert G. Churchill, Jr., Churchill Law Group, PLLC, Tallahassee, for Defendants.

ORDER ON PENDING MOTIONS AND ORDER TRANSFERRING ACTION TO CIRCUIT COURT

This one-count eviction action was heard on Defendants' Motion to Determine No Rent Due, and alternative Motion to Determine Rent. These motions were set for a duly-noticed evidentiary hearing before this Court. This Court having reviewed the motions and having heard evidence and argument of counsel, and being otherwise fully advised in the premises, ORDERS AND ADJUDGES:

1. The parties entered into a lease agreement with option to purchase with respect to a parcel of real property at which the Defendants continue to reside.

2. The evidence indicates that the funds paid toward the purchase price of the real property, if the option is exercised, exceed the threshold limits found in Florida Statute §83.42(2), which excludes from the application of the Florida Residential Landlord-Tenant Act matters involving "[o]ccupancy under a contract of sale of a dwelling unit or the property of which it is a part in which the buyer has paid at least 12 months' rent or in which the buyer has paid at least 1 month's rent and a deposit of at least 5 percent of the purchase price of the property." Fla. Stat. § 83.42(2).

3. Under the circumstances presented by the evidence before the Court, the County Court does not have jurisdiction over this controversy under the Florida Residential Landlord Tenant Act. *See Id.*; *see also Morgan and Springen v. Hewitt*, 23 FLW Supp. 676a (Fla. 9th Circ.—Appellate, 2015) (applying same statutory exclusion to lease-purchase agreement and requiring evidentiary hearing in trial court).

4. The Court TAKES NO ACTION on the pending motions, and finds that the Court is without jurisdiction in this matter. This matter is within the exclusive original jurisdiction of the Circuit Court.

5. This action is transferred to the Circuit Court, with the Plaintiff to pay any necessary filing fees to the clerk within 20 days of this Order. Plaintiff may amend her Complaint as she or her attorney may deem appropriate, and the Defendants may file a response to any such amended Complaint within the timelines of applicable rules.

6. The Clerk is directed to close the file.

* * *

Insurance—Automobile—Windshield repair—Attorney's fees—Confession of judgment—Insurer's payment of appraisal award did not constitute confession of judgment where insurer acknowledged coverage for windshield repair and made payment of benefits presuit while advising assignee that there was disagreement as to cost of repairs that required appraisal—Under circumstances, lawsuit was not necessary catalyst for appraisal award—Argument that suit was filed because insurer did not pay tax with its initial payment of claim was not raised in complaint or supported by evidence

WL AUTO GLASS, LLC, a/a/o Maria Lugo Fernandez, Plaintiff, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant. County Court, 9th Judicial Circuit in and for Orange County. Case No. 2023-SC-045920-O. Division 70. October 13, 2025. Adam McGinnis, Judge. Counsel: Marc LoCascio, Law Office of Michael B. Brehne, P.A., Altamonte Springs, for Plaintiff. Lisa M. Lewis, Cole, Scott, & Kissane, P.A., Tampa, for Defendant.

ORDER ON DEFENDANT'S AMENDED MOTION FOR SUMMARY JUDGMENT AND PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT/CONFESSION OF JUDGMENT

THIS CAUSE having come before the Court on Defendant's Amended Motion for Summary Judgment Plaintiff's Motion for Partial Summary Judgment/Confession of Judgment and the Court having reviewed the parties' motions and evidence filed in support, having heard argument of counsel, and being otherwise advised in the Premises, hereby sets forth the following background information, undisputed facts of law and conclusions of law:

FACTS

1. This matter involves a first party breach of contract claim asserted by WL Auto Glass, LLC on behalf of Maria Lugo Fernandez, a State Farm insured, who claims State Farm underpaid a claim for a windshield replacement.

2. On March 5, 2023, the insured's vehicle sustained damage, requiring a replacement of the insured's windshield.

3. Plaintiff replaced the windshield on March 10, 2023, and thereafter, Plaintiff submitted an Invoice to State Farm in the amount of $1,424.90.

4. State Farm afforded coverage and issued a payment of $402.94 for the loss on April 13, 2023, which Plaintiff accepted and cashed. With its April 13, 2023 payment, State Farm sent a letter to Plaintiff, advising of the mandatory appraisal provision of the policy, as there was a disagreement as to the cost of the replacement.

5. The policy also states that "[l]egal action may not be brought against State Farm until there has been full compliance with all provisions of the policy

6. Plaintiff did not respond to the April 13, 2023 correspondence, nor did it otherwise communicate with State Farm.

7. Instead, on July 27, 2023, Plaintiff filed this lawsuit against State Farm alleging breach of contract alleging an underpayment of "benefits".

8. In response to Plaintiff's Complaint, State Farm moved to Dismiss, or Alternatively, Stay and Compel Appraisal, and on February 28, 2024, the Court entered an Order directing the parties to complete appraisal in accordance with the terms of the policy.

9. The parties completed the appraisal and State Farm timely paid the appraisal award.

10. Thereafter, State Farm filed its Amended Motion for Summary Judgment on April 30, 2025 and Plaintiff filed its Motion for Partial Summary Judgment/Confession of Judgment and Response to Defendant's Motion for Summary Judgment on May 22, 2025.

11. On June 4, 2025, State Farm filed its Response in Opposition to Plaintiff's Motion for Partial Summary Judgment/Confession of Judgment.

CONCLUSIONS OF LAW

The Appraisal Clause clearly states that "appraisal will be used as the first step toward resolution" of a "disagreement as to the cost of repair, replacement, or recalibration of glass." *See* Policy Form 6901A. Further, the Policy mandates that legal action, like this lawsuit, may not be brought against State Farm until all provisions of the Policy are complied with. *See Policy Form 9810A* at 46. As an endorsement to the Policy, the Appraisal Clause is a provision which must be complied with prior to any action being brought. *Id.* Nonetheless, Plaintiff filed suit against State Farm alleging a breach. Now that the parties have completed the appraisal process and State Farm timely paid the award, Plaintiff is alleging this Court should enter judgment in its favor under the theory that State Farm "confessed judgment".

The confession of judgment doctrine applies when an insurer agrees to settle a contested claim in a pending lawsuit. *State Farm Fla. Ins. Co. v. Lorenzo,* 969 So.2d 393, 397 (Fla. 5th DCA 2007) [32 Fla. L. Weekly D1791e] ("This doctrine applies where the insurer has denied benefits the insured was entitled to, forcing the insured to file suit, resulting in the insurer's change of heart and payment before judgment" (emphasis added) (citing *Ivey v. Allstate Ins. Co.,* 774 So.2d 679, 684 (Fla. 2000) [25 Fla. L. Weekly S1103a]); *Wollard v. Lloyd's & Cos. Of Lloyds*, 439 So.2d 217 (Fla. 1983); *Johnson v. Omega Ins. Co.,* 200 So.3d 1207 (Fla. 2016) [41 Fla. L. Weekly S415a] ([I]t is well settled that the payment of a previously denied claim following the initiation of an action for recovery, but prior to the issuance of a final judgment, constitutes the functional equivalent of a confession of judgment" (citation omitted) (emphasis added)). Under the doctrine, an insurer's post-suit payment is considered a "confession of judgment" that may trigger an insured's entitlement to attorneys' fees pursuant to 627.428 Fla. Stat. which provides for an award of attorneys' fees to insureds who prevail in litigation with their insurers over policy benefits that were otherwise denied. *Lorenzo,* 969 So.2d at 397; § 627.428, Fla. Stat.

Plaintiff relies on *Ivey v. Allstate Ins. Co.,* 774 So.2d 679 (Fla. 2000) [25 Fla. L. Weekly S1103a] to support its theory; however, the Court in *Ivey* correctly found a post-suit payment to be a confession of judgment, where Allstate had denied a claim for PIP benefits and then subsequently issued payment on the claim during litigation. This is distinguishable from the facts of this case, where State Farm never denied the claim and was complying with the policy terms. Likewise, much of the caselaw in which Plaintiff relies involves cases where coverage was at issue and are distinguishable from the facts of this case where coverage is not at issue.

Courts have held that an award of attorneys' fees is not appropriate where the insured races to the courthouse and files a lawsuit, despite the insurer complying with its contractual obligations. *State Farm Fla. Ins. Co. v. Lorenzo,* 969 So. 2d at 398. In other words, the lawsuit must have been "reasonably necessary" and, absent necessity, courts hold an award of fees under section 627.428 is inappropriate. *Travelers of Fla. v. Stormont,* 43 So. 3d 941, 942 (Fla. 3d DCA 2010) [35 Fla. L. Weekly D2059a]. A lawsuit becomes necessary only when the claims adjusting process breaks down and the insurer is no longer attempting to resolve the claim under the policy. *Goldman v. United Servs. Auto. Ass'n,* 244 So. 3d 310, 311 (Fla. 4th DCA 2018) [43 Fla. L. Weekly D854a] (citing *Hill v. State Farm Fla. Ins. Co.,* 35 So. 3d 956, 960 (Fla. 2d DCA 2010) [35 Fla. L. Weekly D1041a]).

The confession of judgment doctrine does not apply to this matter because State Farm acknowledged coverage and never denied Plaintiff's claim. State Farm did not agree to pay a previously denied claim. In fact, State Farm promptly afforded coverage in this matter and issued a payment pre-suit. State Farm moved to dismiss the action

because Plaintiff failed to comply with the Policy's mandatory Appraisal Clause. Thereafter, the Court ordered the parties to appraisal and the appraisers determined the cost of replacement of the glass pursuant to the Policy. Florida law is clear that the confession of judgment doctrine turns on the purpose and policy of 627.428 Fla. Stat., which "is to discourage insurers from contesting valid claims, and to reimburse insureds for their attorney's fees incurred when they must enforce in court their contract with the insurance company." *Lorenzo,* 969 So.2d at 397 (declining to apply the confession of judgment doctrine in insureds breach of contract action for payment made by insurer post-suit, reasoning that the lawsuit was premature and the insurer was merely complying with its policy obligations); see also *Bell v. U.S.B. Acquisition Co., Inc.,* 734 So.2d 403, 411 n.10 (Fla. 1999) [24 Fla. L. Weekly S220a]. Florida courts "generally do not apply the doctrine where the insureds were not forced to sue to receive benefits; applying the doctrine would encourage unnecessary litigation by rewarding a race to the courthouse for attorney's fees even where the insurer was complying with its obligations under the policy." *Lorenzo,* 969 So.2d. at 397-398.

Here, no argument can be made that Plaintiff had to file this lawsuit to enforce the Appraisal Clause or receive payment for the claim. State Farm never denied Plaintiffs claim. Nor did State Farm refuse to proceed with appraisal prior to Plaintiff filing suit. In fact, quite the contrary is true and it was Plaintiff that refused to proceed with the mandatory contractual term requiring appraisal alleging that it had "no assurances that appraisal would effectuate payment". Plaintiff's uncertainty as to the appraisal process and outcome of same is not sufficient to avoid a policy term which was agreed to by the parties. This lawsuit played no part in the decision to resolve the cost of replacement dispute pursuant to the Appraisal Clause. Indeed, appraisal is to be used as the first step towards resolution, in accordance with the Policy. Therefore, the confession of judgment doctrine does not play any part in this case because Plaintiff would have received the same remedy (i.e. determination of the cost of replacement through appraisal) without racing to the courthouse and simply agreeing to go to appraisal. To apply the doctrine would reward Plaintiff for racing to the courthouse for attorneys' fees even though State Farm never denied Plaintiff's claim and State Farm's post-suit payment was simply to comply with the Appraisal Clause—something it would have done without the need for this lawsuit. An award of attorneys' fees under these circumstances would be contrary to the purpose and policy of §627.428 Fla. Stat.

Because § 627.428 is in derogation of common law, it must be strictly construed. The Supreme Court has consistently held that the purpose of § 627.428 "is to discourage litigation and encourage prompt disposition of valid insurance claims without litigation." *Wollard v. Lloyd's & Companies of Lloyd's,* 439 So. 2d 217, 218 (Fla. 1983) (citing *Cincinnati Ins. Co. v. Palmer,* 297 So. 2d 96 (Fla. 5th DCA 1980)). Other Florida courts agree and maintain that the objective of § 627.428 is "to discourage the contesting of valid claims by insurance companies and to reimburse successful insureds for their attorney fees *when they are compelled* to [ ] sue to enforce their insurance contracts." *Tristar Lodging, Inc. v. Arch Specialty Ins. Co.,* 434 F. Supp. 2d 1286, 1295 (M.D. Fla., 2006) (citing *Ins. Co. of North America v. Lexow,* 602 So. 2d 528 (Fla. 1992)). Simply put, § 627.428 authorizes recovery of attorney fees from an insurer only when the insurer has wrongfully withheld payment from the insured. *Tristar Lodging, Inc.,* 434 F.Supp. 2d at 1298.

In the present case, there was no withholding of payment. In fact, State Farm issued a payment prior to the filing of this lawsuit and advised Plaintiff of the policy's mandatory requirement of appraisal, acknowledging that the amount State Farm determined was owed was less than the amount of Plaintiff's invoice. The invocation of appraisal along with the initial payment was geared at facilitating the "prompt disposition of [the insured's] valid insurance claim [to avoid] litigation." *Wollard,* 439 So. 2d at 218; *compare Goldman, J.P.F.D. Inv. Corp. v. United Specialty Ins. Co.,* 322 F. Supp. 3d 1263 (M.D. Fla. 2018) (the court concluded "that confirmation of an appraisal award and an award of attorneys' fees are not appropriate if the insurer was taking steps to resolve the dispute without court intervention"). From the moment State Farm received this subject claim, it has followed the terms of the governing insurance contract and has relied upon the alternative dispute resolution provision of the policy to determine the amount in dispute. It was not necessary for the Plaintiff to file the instant lawsuit in order to recover the benefits which have been determined through the appraisal process. It would be unjust for State Farm to pay Plaintiff's attorney fees merely because it filed suit.

In general, the intent of § 627.428 is to award an insured attorney fees when there is no other viable option to resolve their dispute other than filing a lawsuit, i.e. when filing a lawsuit is unavoidable. *Hill v. State Farm Fla. Ins. Co.,* 35 So. 3d 956, 960 (Fla. 2d DCA 2010) [35 Fla. L. Weekly D1041a]. Section 627.428 was enacted "to resolve [ ] legitimate dispute[s]," and not simply to collect attorney's fees. *Id. Contra Clifton v. United Casualty Insurance Co.,* 31 So. 3d 826 (held that summary judgment in favor of the insurer is improper when there was a bona fide dispute that forced the insured to file a lawsuit). *Hill* stated, "[t]he fees we envisioned [ ] were the fees necessary to force [the insurer] back to the negotiations table to resolve the dispute within the terms of the insurance contract.

In the present case, no "legitimate dispute" existed that forced Plaintiff to file the lawsuit. *Id.* State Farm never denied coverage, nor stalled as to issuing a payment pursuant to the terms of the policy for the damaged windshield claim. In fact, State Farm sent payment to Plaintiff and advised them of the mandatory appraisal provision, as there was a disagreement as to the cost of the replacement. Furthermore, State Farm never stopped negotiating. State Farm was the only party that wanted to negotiate in good faith and quickly determine the amount in dispute.

Plaintiff alleged at the hearing that suit was filed because State Farm did not pay tax with its initial payment. However, the record is devoid of any evidence to support this and Plaintiff did not raise this alleged issue in the pleadings and it cannot be raised for the first time at a summary judgment hearing. *Fernandez v. Fla. Nat'l Coll., Inc.,* 925 So. 2d 1096, 1101 (Fla. 3d DCA 2006) [31 Fla. L. Weekly D922a] ("[I]ssues that are not pled *in a complaint* cannot be considered by the trial court at a summary judgment hearing.") (emphasis added).

In light of the foregoing, the Court finds that this lawsuit was not a necessary catalyst for the appraisal award and that State Farm's payment of the award did not constitute a confession of judgment. State Farm acknowledged coverage, paid the claim and advised Plaintiff that a disagreement existed between the parties, which required appraisal, per the policy terms. State Farm did not deny Plaintiff's claim, and it follows that State Farm did not agree to pay a previously denied claim, but only paid the appraisal award, as was required by the policy following the completion of the appraisal process. Furthermore, Plaintiff is not entitled to recover any fees or costs and this matter should be dismissed with prejudice.

WHEREFORE, it is ORDERED and ADJUDGED that:

1.) Defendant's Amended Motion for Summary Judgment and Memorandum of Law is hereby GRANTED.

2.) Plaintiff's Motion for Partial Summary Judgment/Confession of Judgement is hereby DENIED.

3.) Plaintiff shall take nothing in this action and Plaintiff shall go henceforth without day.

4.) This case is DISMISSED WITH PREJUDICE.

* * *

Insurance—Automobile—Windshield repair—Jurisdiction—Non-residents—Foreign insurer—General jurisdiction over Arizona insurer is not established where insurer's place of incorporation and principal place of business is Arizona and, in fact, insurer is not authorized to sell insurance in Florida and does not conduct business in Florida—Plaintiff failed to show that its claims arise out of or relate to insurer's contacts with Florida or that insurer purposefully availed itself of privilege of conducting activities within Florida so as to establish court's specific jurisdiction over insurer where policy was Arizona policy written for Arizona resident, loss occurred in Arizona, and windshield repair was performed in Arizona—Case dismissed with prejudice

BANG AUTOGLASS, LLC, o/b/o Cedric Hodrick, Plaintiff, v. ARIZONA AUTO INSURANCE COMPANY, Defendant. County Court, 9th Judicial Circuit in and for Orange County. Case No. 2025-SC-012486-O. October 20, 2025. Martha C. Adams, Judge. Counsel: William England, Law Office of Chad A. Barr, P.A., Altamonte Springs, for Plaintiff. Lisa M. Lewis, Cole, Scott, & Kissane, P.A., Tampa, for Defendant.

ORDER ON DEFENDANT'S MOTION TO DISMISS

THIS CAUSE having come before the Court on Defendant's Motion to Dismiss and the Court having reviewed the Motion, Defendant's Declaration, Plaintiff's Response in Opposition, and being otherwise advised in the Premises, it is hereupon:

ORDERED AND ADJUDGED as follows:

Plaintiff filed this action on April 28, 2025, against Defendant, a nonresident, Arizona entity, alleging breach of contract for failure to pay comprehensive benefits for damage sustained to the insured's windshield. In response, Defendant filed its Motion to Dismiss on May 28, 2025 seeking a dismissal due to Plaintiff's failure to state a cause of action, lack of personal jurisdiction and improper venue.

While all Florida residents are subject to the jurisdiction of Florida courts, nonresident defendants are only subject to Florida court jurisdiction if there are strict constitutional and statutory requirements met. For a nonresident defendant to be subject to the jurisdiction of Florida courts, one of the specific acts enumerated in §48.193, otherwise known as Florida's long-arm statute, must be qualifying.

Personal jurisdiction can be general or specific. *Madara v. Hall,* 916 F.2d 1510, 1516 n.7 (11th Cir. 1990). "General personal jurisdiction is based on a defendant's substantial activity in [a state] without regard to where the cause of action arose," whereas "specific personal jurisdiction authorizes jurisdiction over causes of action arising from or related to the defendant's actions within [a state]." *Louis Vuitton Malletier, S.A. v. Mosseri,* 736 F.3d 1339, 1352 (11th Cir. 2013) [24 Fla. L. Weekly Fed. C813a]. The "paradigm all-purpose forums for general jurisdiction are a corporation's place of incorporation and principal place of business." *Daimler AG v. Bauman,* 571 U.S. 117, 118 (2014) [24 Fla. L. Weekly Fed. S503a]. Here, Defendant's place of incorporation and principal place of business is Arizona. In fact, Defendant is not authorized to sell insurance in Florida and does not conduct business in the state.

In specific jurisdiction cases, courts apply a three-part test for due process, asking whether: (1) the plaintiff's claims "arise out of or relate to" defendant's contacts with the forum; (2) the nonresident defendant "purposefully availed" itself "of the privilege of conducting activities within the forum state, thus invoking the benefit of the forum state's laws"; and (3) "the exercise of personal jurisdiction comports with traditional notions of fair play and substantial justice." *Louis Vuitton Malletier, S.A. v. Mosseri,* 736 F.3d 1339, 1355 (11th Cir. 2013) [24 Fla. L. Weekly Fed. C813a]. Plaintiff's claims do not "arise out of or relate to" Defendant's contacts with Florida. Furthermore, Defendant has not "purposefully availed" itself of conducting activities within the forum state. The applicable policy was an Arizona policy, written in Arizona for an Arizona resident. The loss occurred in Arizona and the work performed by Plaintiff occurred in Arizona. Because Plaintiff is unable to show that the first two prongs are met, the burden does not shift to Defendant to establish that jurisdiction is improper under the third prong. *Id.*

However, even if we were to assume that Plaintiff met its burden, which it has not, Defendant has filed a Declaration in this matter to rebut any argument made in favor of jurisdiction. Plaintiff has further failed to rebut the evidence provided by Defendant, or to meet its burden to prove that Arizona Auto Insurance Company had sufficient minimum contacts with Florida to establish that Florida Court have Jurisdiction of the Defendant.

Plaintiff has failed to produce any evidence to establish how personal jurisdiction would be exercised by this Florida Court over the nonresident defendant. The only evidence before this Court, is that Cedric Hodrick, while an Arizona Resident, purchased an Auto Insurance Policy from an Arizona entity which does not transact business within the State of Florida. Further, Mr. Hodrick's claim arises out of a loss that occurred in the State of Arizona and for a windshield replacement that took place in Arizona. Simply stated, Plaintiff failed to provide facts to establish that the Defendant is subject to the jurisdiction of Florida courts.

ORDERED AND ADJUDGED that said Motion be, and the same is hereby GRANTED. Plaintiff's Complaint and this case are hereby DISMISSED, with prejudice. The Plaintiff shall take nothing by this action and the Defendant shall go forth hence without day.

* * *

Insurance—Personal injury protection—Declaratory judgment—Deductible—Based on policy and testimony of insurer's witnesses, court finds that policy contains PIP deductible in amount of $1,000—Insured's inability to remember events leading to securing insurance coverage does not create issue of material fact as to election of deductible

UNIVERSITY DIAGNOSTIC INSTITUTE WINTER PARK, PLLC, a/s/o Cornelious Blanc, Plaintiff, v. GEICO INDEMNITY COMPANY, Defendant. County Court, 9th Judicial Circuit in and for Orange County. Case No. 2021-CC-011201-O. May 21, 2025. Jeramy C. Beasley, Judge. Counsel: Dave Sooklal, Anthony-Smith Law, P.A., Ocoee, for Plaintiff. Megan Lindsey, Law Office of Alexa C. Salem, Orlando; and David S. Dougherty, Law Office of Jaskirat K. Asti, Tampa, for Defendant.

ORDER DENYING PLAINTIFF'S MOTION FOR FINAL SUMMARY JUDGMENT (FILED 8/18/2023) AND GRANTING DEFENDANT'S MOTION FOR FINAL SUMMARY JUDGMENT AND RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (FILED 3/6/2024)

THIS CAUSE, having come before the Court on February 14, 2025, on Defendant's Motion For Final Summary Judgment And Response To Plaintiff's Motion For Final Summary Judgment Filed On August 18, 2023 (Filing #193443488 E-Filed 03/06/2024 02:05:01 PM) and Plaintiff's Motion For Final Summary Judgment (Filing #180013605 E-Filed 08/18/2023 03:34:23 PM), and this Honorable Court having heard argument of counsel and being otherwise fully advised in the premises, finds as follows:

PROCEDURAL HISTORY

Plaintiff filed a Complaint for declaratory judgment on August 23, 2021. Paragraph 14 of the Complaint states "there exists a bona fide dispute regarding whether the subject policy of insurance includes a PIP deductible." Plaintiff's wherefore clause in the Complaint requests the entry of declaratory judgment (A) that the subject policy of insurance does not contain a PIP deductible or (B) should the Court determine the subject policy includes a PIP deductible, the actual deductible elected.

On July 26, 2023, this Court first heard arguments on the parties'

motions for summary judgment filed in June of 2023. On July 30, 2023, this Court entered an order denying, in part, Plaintiff's Amended Motion for Final Summary Judgment and granting it, in part, as it relates to standing. On August 9, 2023, Defendant filed its Motion for Reconsideration and/or Clarification and Response to Plaintiff's Motion for Clarification Regarding this Court's Order Denying Both Parties' Motions for Summary Judgment. On December 5, 2023, this Court granted Defendant's motion by stating, in part, "[b]oth Parties' Motions for Summary Judgment shall be reheard by this court." The rehearing took place on November 27, 2024. On February 13, 2025, this Court entered an Order again denying Defendant's motion for summary judgment and granting, in part, Plaintiff's motion for summary judgment as to the affirmative defense regarding standing.

On February 14, 2025, this Court heard the parties second set of dispositive motions.

SUMMARY JUDGMENT STANDARD

Under rule 1.510(a), a trial court must grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Our supreme court amended this rule several years ago to comport with the *Celotex* trilogy and the federal summary judgment standard. See *In re Amends. to Fla. Rule of Civ. Proc. 1.510 (In re Amends. I)*, 309 So. 3d 192 (Fla. 2020) [46 Fla. L. Weekly S6a]; *In re Amends. to Fla. Rule of Civ. Proc. 1.510 (In re Amends. II)*, 317 So. 3d 72 (Fla. 2021) [46 Fla. L. Weekly S95a]. Rule 1.510(a) now directs courts to construe and apply it "in accordance with the federal summary judgment standard." Fla. R. Civ. P. 1.510(a).

Under Rule 56(a) of the Federal Rules of Civil Procedure, summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56. "Rule 56[ ] mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The moving party bears the initial burden of proving the absence of a genuine issue of material fact. *Id.* at 323. The burden then shifts to the nonmoving party, who is required to "go beyond the pleadings" to establish that there is a "genuine issue for trial." *Id.* at 324 (citation and internal quotation marks omitted). A dispute about a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In support of Defendant's motion for final summary judgment, the Defendant attached the affidavit of the GEICO Claims Examiner Jalisia Bryan and the affidavit of GEICO Underwriting Analyst Christopher Smith. The Defendant also relied upon deposition transcripts, including that of Plaintiff's corporate representative Michael Lamb filed on February 16, 2024. In support of Plaintiff's motion for final summary judgment, the Plaintiff filed the deposition transcript of Christopher Smith on January 30, 2024, and the deposition transcript of the policyholder, Conelius Blanc, on August 11, 2023.

Based upon the review of all the testimony and the exhibits from the affidavits and the transcripts, this Court concludes that the policy at issue has no ambiguity and is the best evidence of what the policy contains in terms of a deductible. The subject insurance policy, its declarations page, and the testimony of the Defendant's witnesses are sufficient evidence of the deductible election and its amount. As a result, this Court finds the subject policy contains a one thousand ($1,000.00) dollar personal injury protection deductible.

This Court agrees with the Defendant's characterization of Mr. Blanc's testimony as demonstrating the difference between uncertainty and denial. Mr. Blanc's testimony showed his inability to remember the events leading to him securing insurance coverage rather than him saying "no" to those events taking place. As a result, Mr. Blanc's testimony does not create a question of material fact.

Accordingly, it is hereby, **ORDERED AND ADJUDGED:**

1. Plaintiff's Motion For Final Summary Judgment Filed On August 18, 2023, is **DENIED.**

2. Defendant's Motion For Final Summary Judgment Filed On March 6, 2024, is **GRANTED.**

3. Upon this entry of final judgment, this Court reserves jurisdiction to determine if there is any entitlement to attorney's fees or costs and, if so, the reasonable amount.

* * *

Insurance—Automobile—Coverage—Property damage—Prevailing competitive price—Paint supplies rate—Assignee's action against insurer—Insurer is entitled to summary judgment where applicable policy provisions state that cost of repair is based on prevailing competitive price and define PCP as price charged by majority of repair facilities in area as determined by survey made by insurer, and insurer made payment based on price reported by majority of area repair facilities surveyed—No merit to argument that declarations of assignee's chief financial officer and expert regarding higher PCP at "reputable" body shops create factual issue barring summary judgment where policy provides that PCP will be determined by survey made by insurer—Policy is clear and unambiguous and is not rendered ambiguous by CFO's disagreement with how survey was conducted—No merit to argument that assignee's reasonable expectation of payment creates issue of fact where Florida Supreme Court has specifically declined to adopt doctrine of reasonable expectations in context of insurance contracts—Contract language stating that insurer will identify facilities that will perform repairs at PCP if asked does not obligate insurer to disclose facilities in response to discovery served years after assignee repaired vehicle

WEST DELRAY COLLISION CENTER, LLC, a/a/o Carlo Sgrizzi, Plaintiff, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2023-190101-SP-05. Section CC10. September 22, 2025. Eleane Sosa-Bruzon, Judge. Counsel: Robert Twombly, White & Twombly, P.A., Miami Shores, for Plaintiff. Johanna W. Clark, Carlton Fields, P.A., Orlando, for Defendant.

ORDER GRANTING DEFENDANT STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

This matter came before the Court for hearing on August 26, 2025 on Defendant's Motion for Partial Summary Judgment as to Plaintiff's claim for payment of a higher Paint Supplies rate, and Plaintiff's Counter Motion for Partial Summary Judgment on its higher Paint Supplies rate, and the Court having reviewed the motions, evidence, and responses filed by the parties, considered the argument of counsel, and being otherwise fully advised of the premises, sets forth the following background information, undisputed facts, and conclusions of law:

BACKGROUND

1. This matter involves a first party breach of contract claim asserted by Plaintiff, who repaired a vehicle owned by State Farm's insured, Carlo Sgrizzi.

2. Plaintiff took an assignment of Mr. Sgrizzi's insurance benefits and sent State Farm a bill for the vehicle repair which included a Paint

Supplies rate of $40 per hour.

3. State Farm determined the loss amount under the insurance policy for Paint Supplies to be $34 per hour and paid Plaintiff $34 per hour for Paint Supplies.

4. Plaintiff claims State Farm breached the policy by not paying Plaintiff's $40 per hour Paint Supplies rate.

UNDISPUTED FACTS

5. State Farm issued an automobile insurance policy to its insured.

6. The insured's vehicle was damaged, and Plaintiff, West Delray Collision LLC repaired the vehicle.

7. The insured assigned Plaintiff his benefits under State Farm's policy.

8. State Farm exercised its right under the policy to settle the loss and issued payments which were based upon repair estimates written based upon or adjusted to the prevailing competitive price.

9. Specifically, State Farm's repair estimates included $34 per hour for Paint Supplies and after applying the insured's $500 deductible, State Farm issued payments totaling $12,539.22 for the repairs.

10. Plaintiff filed a lawsuit against State Farm under the insured's policy with State Farm alleging State Farm underpaid Plaintiff for the repairs by $5,337.17.

The Insurance Contract

11. State Farm's policy (the "Contract") is an insurance contract.

12. The Contract sets forth different types of coverage, including the type at issue here, Collision Coverage:

> **PHYSICAL DAMAGE COVERAGES**
>
> The physical damage coverages are Comprehensive Coverage, Collision Coverage, Emergency Road Service Coverage, and Car Rental and Travel Expenses Coverage.

Contract at 30.

13. The Contract's insuring agreement for Collision Coverage provides:

> **Insuring Agreements**
>
> 2. **Collision Coverage**
>
> ***We*** will pay for ***loss caused by collision*** to a ***covered vehicle***.

Id. at 31 (emphasis in original).

14. For collision coverage, the Contract expressly sets forth multiple methods by which State Farm, at its option, can determine the amount of loss. This language is key for purposes of this case. The Contract states, in pertinent part:

> **Limits and Loss Settlement—Comprehensive Coverage and Collision Coverage**
>
> *We* have the right to choose to settle with ***you*** or the owner of the ***covered vehicle*** in one of the following ways:
>
> a. Pay the cost to repair the ***covered vehicle*** minus any applicable deductible.
>
> (1) ***We*** have the right to choose one of the following to determine the cost to repair the ***covered vehicle***:
>
> (a) The cost agreed to by both the owner of the ***covered vehicle*** and ***us***;
>
> (b) A bid or repair estimate approved by ***us***; or
>
> (c) A repair estimate that is written based upon or adjusted to
>
> (i) the prevailing competitive price
>
> (ii) the lower of paintless dent repair pricing established by an agreement we have with a third party or the paintless dent repair price that is competitive in the market; or
>
> (iii) a combination of (i) and (ii) above.
>
> The prevailing competitive price means prices charged by a majority of the repair market in the area where the ***covered vehicle*** is to be repaired as determined by a survey mad by ***us.*** If asked, ***we*** will identify some facilities at the prevailing competitive price. . . .

Id. at 32-33 (emphasis in original).

CONCLUSIONS OF LAW

Summary Judgment in Insurance Contract Cases

1. Disputes arising from the meaning of a contract are generally questions of law. As such, they are to be determined by the courts. *See e.g., Palm Beach Cnty. v. Trinity Indus., Inc.*, 661 So. 2d 942, 944 (Fla. 4th DCA 1995) [20 Fla. L. Weekly D2379a] ("Where the determination of the issues of a lawsuit depends upon the construction of a written instrument and the legal effect to be drawn therefrom, the question at issue is essentially one of law only and determinable by entry of summary judgment"); *Langford v. Paravant, Inc.*, 912 So. 2d 359, 306 (Fla. 5th DCA 2005) [30 Fla. L. Weekly D2368a] ("Contract interpretation is generally a question of law for the court, rather than a question of fact"); *Gen. Tool Indus., Inc. v. Premier Machinery, Inc.*, 790 So. 2d 449, 451 (Fla. 3d DCA 2001) [26 Fla. L. Weekly D1026b] ("If the terms of a written contract are clear and undisputed, the construction of the contract is a question of law, and therefore, can be resolved by summary judgment").

2. The parties' intent must be discerned from the four corners of the document, and courts must give the contract's language, which is the best evidence of the parties' intent, its plain meaning. *Zimmerman v. Olympus Fidelity Trust, LLC*, 936 So. 2d 652, 655 (Fla. 4th DCA 2006) [31 Fla. L. Weekly D1822a]; *Dows v. Nike, Inc.*, 846 So. 2d 595, 601 (Fla. 4th DCA 2003) [28 Fla. L. Weekly D1130a] ("It is fundamental that where a contract is clear and unambiguous in its terms, the court may not give those terms any meaning beyond the plain meaning of the words contained therein"); *Barakat v. Broward Cnty. Hous. Auth.*, 771 So. 2d 1193, 1194-95 (Fla. 4th DCA 2000) [25 Fla. L. Weekly D2474a]. ("[I]t is a well-settled principle of contract law that where the terms of a contract are unambiguous, the parties' intent must be determined from within the four corners of the document"). Courts may not rewrite the parties' contract; rather, they must honor the terms and enforce them. *Dows*, 846 So. 2d at 601.

3. These points are true for an insurance contract just as with any other contract. *See, e.g., Nat. Union Fire Ins. Co. of Pittsburgh, P.A. v. Underwriters at Lloyds, London*, 971 So. 2d 885, 889 (Fla. 3d DCA 2007) [32 Fla. L. Weekly D2827b] ("The construction of an insurance policy is a question of law for the court and may be appropriately decided on motions for summary judgment"). Where an insurance policy's contractual language is clear, courts may not indulge in construction or modification, and the express terms of the contract control. *Security Ins. Co. of Hartford v. Puig*, 728 So. 2d 292, 294 (Fla. 3d DCA 1999) [24 Fla. L. Weekly D456a].

4. Further, "[p]articularly with respect to insurance policies, a court needs to view the contract provisions in light of the character of the risks assumed by the insurer." *South Carolina Ins. Co. v. Heuer*, 402 So. 2d 480, 481 (Fla. 4th DCA 1981).

State Farm's Payment of Paint Supplies Rate Established by State Farm's Survey

5. The Contract permits State Farm to choose among various methods to determine the cost to repair the vehicle and thus the amount of loss that State Farm must pay.

6. Here, State Farm chose to use "a repair estimate that is written based upon or adjusted to: (i) the prevailing competitive price." Contract at 32 (emphasis omitted).

7. In doing so, State Farm created repair estimates for the work which included $34 per hour for Paint Supplies.

8. State Farm Estimatics Team Manager, Shawn McKenna, testified $34 per hour for Paint Supplies was the rate established by State Farm's survey for Paint Supplies at the time of the repairs.

9. Based on State Farm's written estimates which were based upon

or adjusted to the prevailing competitive price, State Farm paid Plaintiff paid $34 per hour for Paint Supplies.

10. Pursuant to State Farm's insurance Contract, State Farm determines the prevailing competitive prices by identifying geographic markets and then surveying automobile repair facilities within that geographic market to determine the prevailing rate or price for Body labor, Paint labor, and Paint Supplies (among other categories).

11. West Delray Collision Center LLC is located in Delray Beach, Palm Beach County, Florida. At all times relevant to this litigation, West Delray Collision Center LLC was located within Core-Based Statistical Area (CBSA) 33100, as defined by U.S. census data. Accordingly, State Farm established CBSA 33100 as the geographic market relevant to the subject repair prices owed under the Contract.

12. With respect to State Farm's survey, all automobile repair facilities in CBSA 33100 who meet the Equipment/Capabilities Criteria set forth in State Farm's survey may participate in the survey.

13. At the time State Farm wrote its first estimate for Carlo Sgrizzi's vehicle, State Farm's survey data reflected that a majority of responding automobile repair facilities based on capacity within CBSA 33100 reported a posted labor rate of $34 per hour or less for Paint Supplies. The PCP for Paint Supplies was $34 per hour, which is the amount State Farm paid.

14. The Contract clearly and unambiguously states that State Farm's limit of liability for the subject dispute is the prevailing competitive price, which means prices charged by a majority of the repair market in the area where the covered vehicle is to be repaired as determined by a survey made by State Farm. *Assaf Sasson v. State Farm Mut. Auto. Ins. Co.*, Broward County, Florida, Seventeenth Judicial Circuit, CACE-23-016714 (December 5, 2024 and December 6, 2024 Final Orders of dismissal); *Elite Euro Cars Collision Services, Inc. a/a/o Carlos Uzzo v. State Farm Mut. Auto. Ins. Co.,* Hernando County, Florida, Fifth Judicial Circuit, Case No. 2021-CA0597 [32 Fla. L. Weekly Supp. 238a] (June 20, 2023, Order granting partial summary judgment for State Farm on Paint Supplies); *Collision Concepts of Delray, LLC, a/a/o Larry Canipe v. State Farm Mut. Auto. Ins. Co*., 23 Fla. L. Weekly Supp. 614d (Fla. 15th Cir. Ct. September 29, 2015), *aff'd*, 24 Fla. L. Weekly Supp. 670b (Fla. 15th Cir. Ct. Dec. 13, 2016).

15. Plaintiff has failed to present counter evidence upon which a reasonable jury could return a verdict for Plaintiff.

16. State Farm's payment for Paint Supplies at $34 per hour did not breach the Contract, and neither State Farm's insured nor Plaintiff has suffered any damages under the agreed-upon contractual language for the Paint Supplies rate paid by State Farm.

Plaintiff's Opposition to
State Farm's Motion for Summary Judgment

17. Plaintiff raises multiple arguments in opposition. They are not supported by evidence or law.

18. First, Plaintiff argues the declarations of its CFO, Gregory DiMaria, and Plaintiff's expert, Raul Caraballo, create a question of fact because each attest the prevailing competitive price of "reputable" body shops with "proper certifications" in CBSA 33100 is higher than $34 per hour for Paint Supplies. However, the rate for Paint Supplies owed under the insurance contract is "determined by a survey made by [State Farm]"—not Plaintiff or Plaintiff's expert. Further, Plaintiff has presented no counter evidence rebutting State Farm's testimony that at the time State Farm wrote its first estimate for Carlo Sgrizzi's vehicle, State Farm's survey data reflected that a majority of responding automobile repair facilities based on capacity within CBSA 33100 reported posted labor rate of $34 per hour or less for Paint Supplies which is the exact amount State Farm paid. No evidence supports that State Farm did not pay based PCP for the Paint Supplies rate appearing on its estimates.

19. Second, Plaintiff conflates State Farm's deposition testimony from an unrelated case as being "evasive" ostensibly to create a fact dispute, but Plaintiff's reliance on a deposition from another case, involving a different timeframe, and different issues, is irrelevant to the issue before the Court.

20. Third, Plaintiff argues the Contract is ambiguous and therefore should be construed against State Farm. However, the insurance Contract is clear and unambiguous. *Id.*

21. At least eight Florida courts, in fourteen cases, have decided similar PCP rate disputes governed by the same Contract language at issue here and have repeatedly entered orders granting State Farm summary judgment as to the PCP rates it paid to repair facilities in South Florida and throughout the State. The courts in each of those cases ruled there was no ambiguity in State Farm's contract as to the definition of prevailing competitive price.

22. Provisions in a contract are not ambiguous merely because the parties attempt to interpret them differently. *James River Ins. Co. v. Med Waste Management, LLC*, 46 F. Supp. 3d 1350 (S.D. Fla. 2014) [25 Fla. L. Weekly Fed. D139a]; *Lambert v. Berkley S. Condo. Ass'n*, 680 So. 2d 588, 590 (Fla. 4th DCA 1996) [21 Fla. L. Weekly D2015a] (holding that a true ambiguity does not exist merely because a document can possibly be interpreted in more than one manner). Instead, a true ambiguity requires a finding that a term or terms of the contract have more than one potential meaning and that the existence of those multiple meanings makes the contract unclear. *Id.*; *Dirico v. Redland Estates, Inc.*, 154 So. 3d 355, 357 (Fla. 3d DCA 2014) [39 Fla. L. Weekly D1941a] ("Ambiguity exists only when contractual language 'is susceptible to more than one reasonable interpretation.' "). "When a document's language is clear, a court cannot indulge in construction or interpretation of its plain meaning." *Lambert*, 680 So. 2d at 590.

23. The Contract requires that State Farm pay the cost of repairing the vehicle by paying the prevailing competitive price or "PCP" as determined by "a survey made by us," that is, by State Farm. Contract at 32 ("The prevailing competitive price means prices charged by a majority of the repair market in the area where the ***covered vehicle*** is to be repaired as determined by a survey made by ***us***."). This unambiguous Contract language, including the clear and unambiguous definition of "prevailing competitive price" as constituting the "prices charged by a majority of the repair market in the area. . .as determined by a survey *made by us*" (that is, by State Farm), must be given full effect and force.

24. Significantly, Plaintiff presents no evidence State Farm does not have a survey. Nor does Plaintiff have evidence the rates State Farm paid were inconsistent with what the survey shows are "prices charged by a majority of the repair market in the area where the covered vehicle is to be repaired." Rather, Plaintiff attests only that its Paint Supplies rate "is consistent with the prevailing competitive price." However, any interpretation of the Contract language that attempts to write this clear limitation to PCP as determined by State Farm's survey out of the Contract would fail to give effect to the Contract as written. *See Allstate Ins. Co. v. Orthopedic Specialists*, 212 So. 3d 973, 975-76 (Fla. 2017) [42 Fla. L. Weekly S38a] ("Where the language in an insurance contract is plain and unambiguous, a court must interpret the policy in accordance with the plain meaning so as to give effect to the policy as written." (citation omitted)).

25. Plaintiff argues the Contract is ambiguous because Plaintiff's CFO does not approve of how State Farm performs its survey. Plaintiff's best efforts to ignore the plain language of the Contract, however, do not create an ambiguity.

26. Fourth, Plaintiff argues that, under the implied covenant of good faith and fair dealing, Plaintiff's reasonable expectation of

payment creates a question of fact for the jury. However, the Florida Supreme Court "has specifically declined to adopt the doctrine of reasonable expectations in the context of insurance contracts, concluding that construing insurance policies under this doctrine 'can only lead to uncertainty and unnecessary litigation.' " *QBE Ins. Corp. v. Chalfonte Condo. Apartment Ass'n, Inc.*, 94 So. 3d 541, 549 (Fla. 2012) [37 Fla. L. Weekly S395a] (quoting *Deni Assocs. of Fla., Inc. v. State Farm Fire & Cas. Ins. Co.*, 711 So. 2d 1135, 1140 (Fla. 1998) [23 Fla. L. Weekly S59a]); *Lenhart v. Federated Nat'l Ins. Co.*, 950 So. 2d 454, 461 (Fla. 4th DCA 2007) [32 Fla. L. Weekly D460b] (explaining that a reasonable belief contrary to the plain meaning of insurance policy, or even to unclear text capable of being read to provide coverage, is irrelevant to construction of the policy); *State Farm Fire & Cas. Co. v. Castillo*, 829 So. 2d 242, 247 (Fla. 3d DCA 2002) [27 Fla. L. Weekly D1845a] ("[I]t is the policy's terms which define [insurance] coverage, not the insured's reasonable expectations").

27. In *QBE,* the Florida Supreme Court acknowledged that "Florida contract law does recognize an implied covenant of good faith and fair dealing in every contract," which is "intended to protect the 'reasonable expectations of the contracting parties in light of their express agreement.' " *QBE Ins. Corp.*, 94 So. 3d at 548 (quoting *Ins. Concepts & Design, Inc. v. Healthplan Servs., Inc.*, 785 So. 2d 1232, 1234 (Fla. 4th DCA 2001) [26 Fla. L. Weekly D1316a]). However, "[a] duty of good faith must relate to the performance of an express term of the contract and is not an abstract and independent term of contract which may be asserted as a source of breach when all other terms have been performed pursuant to the contract." *Id.* (emphasis added). *See also* Royal Oldsmobile-GMC Trucks Co., 292 So. 3d at 508 (Fla. 2d DCA 2020) ("the implied covenant cannot be utilized to create a breach where there has been no breach of an express term of the contract")).

28. Furthermore, Plaintiff has not brought a claim under bad faith statute, nor has it pleaded or met the statutory prerequisites for such a claim. *See Hartford Steam Boiler Inspection & Ins. Co. v. Menada, Inc.,* 2017 WL 5956882, at *3 (S.D. Fla. Oct. 19, 2017) (dismissing insured's good faith and fair dealing claim against insurer, holding that "courts have uniformly interpreted *Chalfonte* to preclude express or implied breach of contract claims under Florida law that are, in effect, disguised bad faith claims.") Bad faith has never been, and cannot be, at issue in this case. *QBE,* 94 So. 3d at 549 ("[S]uch first party claims are actually statutory bad-faith claims that must be brought under section 624.155 of the Florida Statutes.").

29. Fifth, Plaintiff argues State Farm did not satisfy its burden of proof related to its affirmative defenses. However, the Court is not granting summary judgment based on an affirmative defense. Plaintiff filed suit for breach of contract. There are three elements for a cause of action for breach of contract: "(1) a valid contract, (2) a material breach, and (3) damages. *E.g.*, *JF & LN, LLC v. Royal Oldsmobile-GMC Trucks Co.,* 292 So. 3d 500, 508-509 (Fla. 2d DCA 2020) [45 Fla. L. Weekly D455a]; Havens v. Coast Fla., P.A., 117 So. 3d 1179, 1181 (Fla. 2d DCA 2013) [38 Fla. L. Weekly D1273b] (same). Breach and damages are essential elements of a cause of action for breach of contract, and "an essential element of the plaintiff's cause of action is not an affirmative defense." Rauch, Weaver, Norfleet, Kurtz & Co. v. AJP Pine Island Warehouses, Inc., 313 So. 3d 625, 629-30 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D591a].

30. Finally, Plaintiff argues that Contract language, "If asked, ***we*** will identify some facilities that will perform the repairs at the prevailing competitive price" obligates State Farm to disclose those facilities to Plaintiff in response to Plaintiff's written discovery served years after Plaintiff repaired the vehicle and State Farm failed to do so. The Court finds that argument without support.

31. In sum, the record shows without dispute that State Farm exercised its option to pay its insured's claim based on a repair estimate that is written based upon or adjusted to the prevailing competitive price. The record taken as a whole cannot lead a rational trier of fact to find for the Plaintiff, and therefore the Court's inquiry is at an end. State Farm complied with the terms of the Contract and is entitled to summary judgment as a matter of law.

WHEREFORE, it is ORDERED and ADJUDGED that:

1. State Farm's Motion for Partial Summary Judgment as to the Paint Supplies paid by State Farm is GRANTED;

2. Plaintiff's Motion for Partial Summary Judgment as to the Paint Supplies paid by State Farm is DENIED.

3. Judgment on the Paint Supplies paid by State Farm is hereby ENTERED in favor of State Farm.

* * *

Insurance—Personal injury protection—Coverage—Conditions precedent—Demand letter—Presuit demand letters that sought amount in excess of amount of damages sought in complaint did not comply with section 627.736(10)

CLEAR VIEW DIAGNOSTIC CORP., a/a/o Maruicio Padilla Verde, Plaintiff, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2024-116173-SP-25. Section CC01. August 13, 2025. Michael Barket, Judge. Counsel: Jason Beau Giller, Giller, P.A., Miami, for Plaintiff. Darien M. Doe, Mimi L. Smith & Associates, Orlando, for Defendant.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

THIS CAUSE having come before the Court on July 17, 2025, on Defendant's Cross-Motion for Final Summary Judgment Regarding Plaintiff's' Defective Demand (DIN 69) and Plaintiff's Motion for Partial Summary Judgment Regarding Compliance with Conditions Precedent of Fla. Stat. 627.736 (10) (DIN 61). The Court having reviewed the competing motions and the materials in the Court record, hearing argument of counsel, considering the applicable law, and being fully advised in the premises, finds as follows:

1. This action arises from a motor vehicle accident which allegedly occurred on or about March 9, 2023 involving Mauricio Padilla Verde in Orlando, Orange County, FL (Complaint at ¶ 9).

2. At the time of the accident, Verde was insured under a State Farm automobile insurance policy, policy no. K46 2973-F17-9A, which included PIP benefits.

3. On June 11, 2024, Plaintiff filed this action for PIP benefits under the Verde policy (*See* Complaint).

4. At that time, Plaintiff did not state an amount in controversy in its Complaint other than to say this is an action for damages "of less than $99.99."

5. As a result of alleged injuries arising from the accident, Verde sought medical treatment from the Plaintiff on April 12, 2023 and May 16, 2023.

6. Plaintiff submitted a "HICF" to State Farm seeking payment for the (MRIs) allegedly rendered to Verde on April 12, 2023 and May 16, 2023.

7. That bill included the following charges:

DATE OF SERVICE	CPT CODE	CHARGE
April 12, 2023	72141	$ 1,890.00
April 12, 2023	73221	$1,890.00
May 16, 2023	72148	$1,890.00

(*Id.*).

8. State Farm capped payment for Plaintiff's charges at 80% of 200% of the 2007 limiting charge pursuant to the PIP Schedule, Fla. Stat. §§ 627.736(5)(a)1.f. and (5)(a)2.

9. On August 7, 2023, State Farm received a demand letter from Plaintiff (dated July 20, 2023) seeking additional PIP benefits in the amount of $1,284.46 for date of service April 12, 2023. The demand seeks an amount that is in excess of the jurisdictional amount alleged in the complaint.

10. On October 2, 2023, State Farm received a demand letter from Plaintiff (dated September 20, 2023) seeking additional PIP benefits in the amount of $580.06 for date of service May 16, 2023. The demand seeks an amount that is in excess of the jurisdictional amount alleged in the complaint.

11. State Farm's affirmative defenses assert: Plaintiff has failed to comply with F.S.§627.736(10) by not satisfying a material condition precedent to filing this cause of action.

12. "[T]he purpose of the demand letter is not just notice of intent to sue. The demand letter also notifies the insurer as to the exact amount for which it will be sued if the insurer does not pay the claim." *Chris Thompson, P.A. v. Geico Indem. Ins. Co.*, 347 So.3d 1 (Fla. 4th DCA July 27, 2022) [47 Fla. L. Weekly D1588b] citing *Rivera v. State Farm Mut. Auto. Ins. Co.*, 317 So. 3d 197, 204 (Fla. 3d DCA 2021) [46 Fla. L. Weekly D447a].

13. A demand letter that complies with the statute permits the insurer to accurately evaluate its decision to pay the claim or litigate. ." *Chris Thompson, P.A. v. Geico Indem. Ins. Co.*, 347 So.3d 1 (Fla. 4th DCA July 27, 2022) [47 Fla. L. Weekly D1588b] referring to *Venus Health Ctr. a/a/o Joally Rojas v. State Farm Fire & Cas. Co.*, 21 Fla. L. Weekly Supp. 496a (Fla. 11th Cir. Ct. Mar. 13, 2014).

14. "Without a doubt, the purpose of the no-fault statutory scheme is to 'provide swift and virtually automatic payment so that the injured insured may get on with his [or her] life without undue financial interruption.' " *Chris Thompson, P.A. v. Geico Indem. Ins. Co.*, 347 So.3d 1 (Fla. 4th DCA July 27, 2022) [47 Fla. L. Weekly D1588b] citing *Ivey v. Allstate Ins. Co.*, 774 So. 2d 679, 683-84 (Fla. 2000) [25 Fla. L. Weekly S1103a] (quoting *Gov't Emps. Ins. Co. v. Gonzalez*, 512 So. 2d 269, 271 (Fla. 3d DCA 1987)). *Rivera v. State Farm Mut. Auto. Ins. Co.*, 317 So. 3d 197 (Fla. Dist. Ct. App. 2021) [46 Fla. L. Weekly D447a].

15. "Section 627.736(10), Florida Statutes (2014), requires a demand letter as a condition precedent to an insured filing a lawsuit to recover PIP benefits." *Rivera v. State Farm Mut. Auto. Ins. Co.*, 317 So. 3d 197 (Fla. Dist. Ct. App. 2021) [46 Fla. L. Weekly D447a].

16. As the statute clearly states, the letter "shall state with specificity" "the name of any medical provider who rendered to an insured the treatment, services, accommodations, or supplies that form the basis of such claim" and "an itemized statement specifying each exact amount, the date of treatment, service, or accommodation, and the type of benefit claimed to be due." (emphasis added). *Rivera v. State Farm Mut. Auto. Ins. Co.*, 317 So. 3d 197 (Fla. Dist. Ct. App. 2021) [46 Fla. L. Weekly D447a].

17. In this case, the Plaintiff served two demand letters seeking an amount in excess of what they are seeking as damages in their complaint. Therefore, the Defendant is not on proper notice of the Plaintiff's intent to sue.

18. The plaintiff's demand letter does not comply with F.S. 627.736(10).

It is therefore ORDERED AND ADJUDGED as follows:

1. Defendant's Cross-Motion for Final Summary Judgment is hereby GRANTED.

2. Plaintiff's Motion for Partial Summary Judgment is hereby DENIED.

* * *

Insurance—Personal injury protection—Coverage—Exhaustion of policy limits—Plaintiff, as assignee of insured, may not challenge payments made to other providers where benefits were exhausted in full compliance with statute and PIP policy—Insurer's motion for final summary judgment is granted

GABLES INSURANCE RECOVERY, a/a/o Evelyn Pedraza, Plaintiff, v. INFINITY INDEMNITY INSURANCE COMPANY, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2021-005993-SP-24. Section MB01. September 28, 2025. Stephanie Silver, Judge. Counsel: Aymee C. Gonzalez, Law Office of Aymee C. Gonzalez, P.A.; and Robert Pelier, Law Office of Robert N. Pelier, P.A., for Plaintiff. Robert Phaneuf and Carrie Buchwald, Law Office of Terry M. Torres & Associates, Doral, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE having come before the Court, and the Court being otherwise fully advised in the premises, it is hereby:

ORDERED and ADJUDGED that:

THIS CAUSE, having come before the Court on March 21, 2025, to be heard on Defendant's Motion for Final Summary Judgment on Exhaustion. The Court gave the parties extensive time to file their respective motions. The Court having reviewed the file, declarations, pleadings, record evidence, and considered the arguments of counsel, and being otherwise fully advised in the premises, the Court finds as follows:

FACTS

1. Plaintiff filed a Personal Injury Protection ("PIP") suit, as assignee of Evelyn Pedraza (the "Claimant") against the Defendant for compensation for date of service May 18, 2016.[1]

2. On July 12, 2024, the Court entered its *Order Resulting from Hearing Related to Jury Instructions and Verdict Forms* finding that the sole remaining issues in this case are legal issues to be decided by summary judgment. That order provided that the Plaintiff had 30-45 days from July 12, 2024 to file opposition evidence, if any. The parties stipulated that the issues in this case were legal issues only and did not require a trial in which the *fact finder* would make decisions on disputed facts in this case.

3. On February 10, 2025, the court entered its order Denying Plaintiff's Motion for Leave to Raise Reply. The only remaining issue in this case is whether the insurance company properly exhausted the $10,000 PIP policy through payment of valid claims.

4. The Court finds the Defendant properly exhausted all PIP benefits on behalf of the Claimant, as Infinity has paid $10,000.00 in PIP benefits on behalf of the Claimant.[2]

5. In opposition to the Defendant's Motion, the Plaintiff relies upon the affidavit of Carlos Plana and the deposition transcript of LaDonna Newton as well as the Explanations of Benefits, Treatment Notes, and PIP Log.

6. At the time of the accident, the Claimant was covered under a policy of insurance issued by the Defendant that provided $10,000.00 in PIP benefits.

7. The policy provided PIP benefits in conformance with the Florida Motor Vehicle No-Fault Law and Florida Statute § 627.736.

8. The Defendant's Motion for Summary Judgment was supported by an affidavit of its corporate representative, LaDonna Newton.

9. During the hearing, the Defendant provided a copy of the PIP Log and the Insurance Policy as exhibits attached to the affidavit of its corporate representative, LaDonna Newton.

10. The undisputed facts and plain reading of the record evidence, including but not limited to Defendant's Affidavit in Support of Summary Judgment demonstrate that the Defendant exhausted all available PIP benefits on August 5, 2016.

11. During the hearing, the Defendant argues that benefits were paid to exhaustion in accordance with the statute and policy and that

the Plaintiff is foreclosed from raising bad faith exhaustion.

12. Furthermore, the Defendant points to the deposition testimony indicating that its corporate representative paid claims supported by physician signature as validly submitted by a physician. Same was presented in deposition testimony at the time that Plaintiff examined the Defendant's Adjuster: *See also*, "Q. Okay. So did you have any way of knowing that the [physician] signature on that page is the initial of this medical doctor—or the signature? I'm sorry. A. We have no reason to question it at this time."[3]

The sole issue before this Court is whether the Defendant paid valid claims to the exhaustion of PIP benefits. The analysis before this Court is whether the Defendant met its burden for a grant of final summary judgment in its favor, given the competing factual positions between the parties.

13. In the absence of the bad faith exhaustion allegation, the sole case to which both Plaintiff and Defense counsel highlight before this court is the payment of valid claims. In hearing, both counsels pointed to *Northwoods Sports Med. & Physical Rehab., Inc. v. Daniel N.*, 137 So. 3d 1049 (Fla. 4th DCA 2014) [39 Fla. L. Weekly D491a] as the guiding case.

14. Accordingly, this court is guided by *Northwoods* as cited in *Envision Physical Therapy, Inc. v. GEICO Gen. Ins. Co.*, 2024 Fla. App. LEXIS 1970 (Fla. 3d DCA 2024) [49 Fla. L. Weekly D593d]. While only a citation opinion, the Third District Court affirmed the progeny of caselaw demonstrating the proper exhaustion of benefits. The instant case matches the facts in *Northwoods* in that the payment of valid claims extinguishes post suit entitlement. "We conclude, however, that where the reasonableness of the provider's claim is still in dispute, post-suit exhaustion of benefits extinguishes the provider's right to further payments, as long as exhaustion is prior to the establishment of the amount to which the medical provider is entitled under PIP." *Id.* at 1056.

Summary Judgment Standard

"The summary judgment standard provided for in [Rule 1.510] shall be construed and applied in accordance with the federal summary judgment standard articulated in *Celotex Corp. v. Catrett*, 4477 U.S. 317, . . . (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 . . . (1986); and *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 . . . (1986)" *In re Amends. To Fla. Rule Civ. Proc. 1.510*, 317 So. 3d 72, 74 (Fla. 2021) [46 Fla. L. Weekly S95a] (citation omitted). "Summary judgment is warranted where the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a)." *Auriga Polymers Inc. v. PMCM2, LLC as Tr. For Beaulieu Liquidating Trust*, 40 F. 4th 1273, 1281 (11th Cir. 2022) [29 Fla. L. Weekly Fed. C1396a]. Under this standard, "the correct test for the existence of a genuine factual dispute is whether the evidence 'is such that a reasonable jury could return a verdict for the nonmoving party." *In re: Amendments*, 317 So. 3d at 75 (quoting *Anderson*, 477 U.S. at 248). This standard "mirrors the standard for a directed verdict . . ." *Chowdhury v. BankUnited, N.A.*, 366 So. 3d 1130, 1133 (Fla. 3d DCA 2023). "When deciding the appropriateness of a directed verdict or JNOV, Florida trial and appellate courts use the test of whether the verdict is, for JNOVs, or would be, for directed verdicts supported by competent, substantial evidence." *Forbes v. Millionaire Gallery, Inc.*, 335 So. 3d 1260, 1262 (Fla. 3d DCA 2022) [47 Fla. L. Weekly D281a] (citation omitted).

The focus for determining whether a genuine dispute exists, so as to bar summary judgment, is whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. Like the standard for directed verdict, the inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 251-252.

Legal Analysis

Rule 1.510(c) places an initial burden on the moving party to demonstrate the absence of a genuine issue of material fact in a claim or defense raised by the nonmoving party. *Celotex*, 477 U.S. at 322-23 (citations omitted); *see also Nissan Fire & Marine Ins. Co v. Fritz Companies, Inc.*, 210 F.3d 199, 1102 (9th Cir. 2000) ("In order to carry its burden of production, the moving party must either produce evidence negating an essential element of the nonmoving party's claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial."). If the moving party fails to satisfy its initial burden then the nonmoving party need not present any evidence in opposition to the motion for summary judgment. *Id.* at 1102-03 ("If a moving party fails to carry its initial burden of production, [then] the nonmoving party has no obligation to produce anything, even if the nonmoving party would have the ultimate burden of persuasion at trial. In such a case, the nonmoving party may defeat the motion for summary judgment without producing anything.").

In support of its Motion for Summary Judgment, Defendant provided the affidavit of LaDonna Newton (Docket Entry 34), which provided in relevant part, that the PIP Log properly indicated the dates of receipt of the medical bills, when payment was made, who was paid, and how much was paid for the benefit of the claimant's medical treatment in this claim.

In opposition to the Motion for Summary Judgment, Plaintiff pointed out that LaDonna Newton testified that she had no reason to dispute or question the authenticity of the signatures submitted by another medical provider, EM Rehabilitation Center Corp. (hereafter "EM Rehab"), who claimed and received payment of PIP benefits in this case. *See* "A. [LaDonna Newton] We have no reason to question [the authenticity of the signatures on the claims form] at this time."[4]

In hearing, Plaintiff's counsel focused on the affidavit its own Executive Director, Carlos Plana, as filed in opposition to Defendant's position.

The Court notes at the outset that the affidavit of Carlos Plana contains potential inaccuracy. The Carlos Plana Affidavit (Docket Entry 55) does not challenge the signatures reviewed by Infinity and instead states that documentation or information was not reviewed.

Specifically, the Carlos Plana affidavit states at ¶ 19 that he "ha[s] reviewed the transcript of the deposition of Defendant's Corporate Representative LaDonna Newton, and note that **she indicates that no additional documentation or information was received by Infinity in response to the referenced letters**. . ."

The Defendant contends that the testimony provided, as Infinity's corporate representative provided multiple instances of detailed review in issuing payment of valid claims. Specifically, Newton testified in deposition:

> "Q. Do you know when these bills were received by Infinity?
> A. Yes, I do. Hold on.
> A. The All X-ray bill was received on June 28, 2016."[5]
> [. . .]
> "Q. Was it Infinity's position that this was received timely?
> A. There was intent to treat on file, so, therefore, it was received timely."[6]
> [. . .]
> "Q. Sure. Upon receiving the demand letter from Gables in this case that we were just speaking about, did Infinity generate any sort of written response or letter?
> A. Yes, they did."[7]
> [. . .]

[Newton continues]

"Q. Okay. And why is it that Infinity initially determined that they didn't have enough information to pay those specific CPT codes but later changed their mind?

A. All I can say is what it says that they reviewed further and determined to make the payments."[8]

In spite of the contentions raised by Plaintiff's affidavit of its own Executive Director (*see* "Since 2006, **I have served as the Executive Director of Gables Insurance Recovery, Inc.,** where I am responsible for the oversight of recovery efforts. . ."[9]). [Emphasis Supplied]. He is offered as the Plaintiff's expert witness. This court is nonetheless guided by both the evidence presented, the deposition of LaDonna Newton, in evaluating whether valid claims were paid. Additionally, the court has reviewed the evidence in the light most favorable to the non-moving party. It should be noted, however, that this Court is not weighing the credibility or any potential bias of Mr. Plana in this case because it cannot do so in a Motion for Summary Judgment. *See, Desinor v. Citizens Property Ins. Co.*, 3D23-1926 (Fla. 3d DCA, September 3, 2025) [50 Fla. L. Weekly D1976b].

This court is guided by *Envision* as to constituting proper payments. 2024 Fla. App. LEXIS 1970, citing *Progressive Select Ins. Co. v. Dr. Rahat Faderani, DO, MPH, P.A.*, 330 So. 3d 928, 931 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D2420a] ("were we to write on a clean slate, and except for untimely payments, we would hold that an insurance company's 'improper' payments to another provider do not constitute bad faith sufficient to overcome the insurance company's exhaustion of benefits defense to a provider who sues for payment after the policy limits have been exhausted.")

Additionally, the Court further gives consideration to the sworn affidavit of LaDonna Newton regarding both the application of the PIP Benefits as well as the payment under the terms of the policy. The payments issued are in line with the statutory scheme as well as the holdings of the appellate courts. The Third District Court of Appeal advanced the maxim that the statutory framework of the No-Fault Act is to provide "swift and virtually automatic payment" of PIP benefits as those benefits become payable. *Gov't Employees Ins. Co. v. Gonzalez*, 512 So. 2d 269 (Fla. 3d DCA 1987). It is apparent from the record evidence that Defendant's Corporate Representative did not testify as to a lack of information but instead testified that an affirmative decision to execute swift and virtually automatic payment for the benefit of the claimant was enacted. *See also* "the foundation of the legislative scheme is to ***provide swift and virtually automatic payment*** so that the injured insured may get on with his life without undue financial interruption", *Id.* at 271 citing *Comeau v. Safeco Ins. Co.*, 356 So.2d 790 (Fla. 1978). [Emphasis supplied]. In fact, as Ms. Newton testified in her deposition, "the bills [from the other providers] were paid upon receipt, if there were doctors notes with them, they are paid and processed." p. 31, Lines 3-5.

The Defendant wishes for this Court to hold that the Plaintiff does not have standing to dispute payment to another provider. *See Atlas Medical and Orthopedics, LLC d/b/a Dr. Rahat Faderani, DO, MPH, PA a/a/o Eliana Campos v. Progressive Express Ins. Co.*, 25 Fla. L. Weekly Supp. 984a (Broward Cty. Ct. Oct. 30, 2017); *Susanti K. Chowdhury, MD, PA a/a/o Angela Hammel v. Progressive Amer. Ins. Co*, 24 Fla. L. Weekly Supp. 691c (Pinellas Cty. Ct. October 16, 2016). They argue that as Plaintiff, via assignment of benefits, stands solely in the shoes of the insured, the Plaintiff lacks standing to argue on behalf of any another provider. On these grounds alone, the analysis may stop with a finding for Defendant. However, in an abundance of caution, the Plaintiff is given every opportunity to make its argument, including any other recent orders or law regarding the challenges and this Court finds that the Plaintiff has standing.

The holding may have been very different in this case had the Plaintiff properly and timely alleged bad faith and not stipulated as to the facts.

It is noteworthy Courts have been given the standard by which to review bad faith. In hearing, the Plaintiff's reliance on *Coral Imaging Servs. v. Geico Indemnity Ins. Co.*, 955 So. 2d 11 is misplaced, as *Coral Imaging* serves to answer the question of whether "the insurer has the right under the statute to pay for the services rendered by a provider when the provider has concededly failed to submit the bills within the timeframe mandated by § 627.736(5)(b)"[10]

This Court finds there is no genuine issue of material fact that remains. The Plaintiff and Defendant both agreed that this matter was to be disposed by summary judgment, and strict timelines were put in place by agreement and stipulation by the parties.

Therefore, this Court is guided by the opinion in *Envision Physical Therapy, Inc. v. Geico* holding that *Coral Imaging* should be constrained as only to those bills which were paid late or where bad faith is alleged.

The Plaintiff, as assignee, holds no greater rights than the insured and may not challenge payments made to other providers where benefits were exhausted in full compliance with statute and policy. The court finds that Infinity performed fully on its contract, and the insured received the full benefit of the contract.

ACCORDINGLY, it is ORDERED and ADJUDGED that Motion for Final Summary Judgment is hereby GRANTED;

It is further ORDERED and ADJUDGED that Plaintiff shall take nothing by this action and Defendant shall go hence without day. The Court shall reserve jurisdiction as to Defendant's attorneys' fees and taxable costs.

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[1]Plaintiff Statement of Claim at ¶ 9
[2]Defendant's Motion for Summary Judgment at ¶ 7
[3]Newton Depo at 28:4-7
[4]Newton Depo. 28:7
[5]Newton Depo. 15:3-7
[6]Newton Depo. 15:8-11
[7]Newton Depo. 16:20-25
[8]Newton Depo. 35:14-19
[9]Plana Affidavit at ¶ 3
[10]*Id.* at 12
[11]*Envision Physical Therapy, Inc. v. GEICO Gen. Ins. Co.*, 2024 Fla. App. LEXIS 1970, *1-2 [49 Fla. L. Weekly D593d]

* * *

Landlord-tenant—Eviction—Default—Failure to deposit rent into court registry

CONCOURSE COMMERCIAL LC, Plaintiff, v. ACAI TASTY LLC, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2025-141394-CC-24. Section MB01. September 24, 2025. Stephanie Silver, Judge. Counsel: Natanel Wainer, Goldstein & Wainer, PLLC, Miami, for Plaintiff.

DEFAULT FINAL JUDGMENT OF POSSESSION

This cause came before the Court upon Plaintiff's Motion for Final Judgment of Eviction and the Court being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. Plaintiff/landlord filed this action to evict the Defendant tenant from a commercial premises.

2. The Defendant, through a non-lawyer, filed an Answer to the eviction Complaint.

3. On September 15, 2025, the Court ordered Defendant to: (1) deposit in the Court Registry the outstanding rent, CAM, sales tax, occupancy fees, and late fees for August and September by September 17, 2025; and (2) hire counsel and file an Answer by September 22, 2025. The Court's Order cautioned Defendant that if it failed to deposit the August and September rent and fees, a default final judgment of eviction would be entered.

4. Defendant failed to deposit the outstanding rent and fees, hire

counsel, and file an Answer by the required deadlines.

5. The Defendant tenant is required to deposit the outstanding rent into the court registry to assert any defense other than payment. *Stanley v. Quest Intern. Inv., Inc.*, 50 So.3d 672, 674 (Fla. 4th DCA 2011) [35 Fla. L. Weekly D2636a]. Section 83.232, Fla. Stat., was enacted to prevent delinquent tenants from unjustly enriching themselves at their landlord's expense by occupying the premises rent-free while their landlord sues to evict them. *Premici v. United Growth Properties, L.P.*, 648 So. 2d 1241, 1244 (Fla. 5th DCA 1995) [20 Fla. L. Weekly D228c]. Pursuant to Section 83.232, Fla. Stat., since the Defendant failed to make the Court Ordered deposit, Plaintiff is entitled to an immediate judgment for possession of the premises. *Park Adult Residential Facility, Inc. v. Dan Designs, Inc.*, 36 So. 3d 811, 813 (Fla. 3d DCA 2010) [35 Fla. L. Weekly D1192a]; *Kosoy Kendall Assocs. LLC v. Los Latinos Rest., Inc.*, 10 So. 3d 1168, 1168 (Fla. 3d DCA 2009) [34 Fla. L. Weekly D1075a].

6. Furthermore, a corporation, unlike an individual, may not appear in court in 'proper person' and represent itself. Neither may a pleading be signed by a corporate officer who is not a licensed attorney at law. Thus, any pleading purporting to be signed by such a corporate officer is a nullity and has no effect. *Daytona Migi Corp. v. Daytona Automotive Fiberglass, Inc.*, 417 So. 2d 272, 274 (Fla. 5th DCA 1982); *Nicholson Supply Co., Inc. v. First Federal Savings & Loan Assoc. of Hardee County*, 184 So. 2d 438, 442 (Fla. 2d DCA 1966).

7. Based on the foregoing, Plaintiff's Motion is granted. Plaintiff, Concourse Commercial LC, shall recover from Defendant, Acai Tasty LLC, possession of the real property located at 1024 71st Street, # 108, Miami Beach, FL 33141, for which let Writ of Possession issue forthwith.

* * *

Criminal law—Constitutional law—Firearms—Open carry—Constitutionality of statute—Section 790.053's criminalization of open carrying of firearms is unconstitutional because it is incompatible with U.S. Constitution's guarantee of right to bear arms openly for self-defense—Motion to dismiss is granted

STATE OF FLORIDA, Plaintiff, v. KENDRICK DAVIS, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County, Criminal Division. Case No. B25-18239. Section JC. October 1, 2025. Cristina Rivera Correa, Judge. Counsel: Sarah Boger, Assistant State Attorney, Miami, for Plaintiff. Natalie Leitman, Assistant Public Defender, Miami, for Defendant.

ORDER ON MOTION TO DISMISS §790.053 CHARGE AS UNCONSTITUTIONAL

THIS CAUSE came before the Court on the Defendant, Kendrick Davis' ("Defendant") Motion to Dismiss Unconstitutional Charges Under Section 790.053 of the Florida Statutes ("Motion") filed September 12, 2025, and the Court having held a non-evidentiary hearing on October 1, 2025, the Court having reviewed the file and the Court otherwise being fully advised therein, makes the following findings.

Defendant was arrested and charged with a single offense, openly carrying a firearm, in violation of Fla. Stat. Section 790.053 ("Florida's Open Carry Ban") on August 18, 2025.[1]

"The Constitution protects the right to carry arms openly for self-defense. Florida's Open Carry Ban cannot be reconciled with that guarantee." *McDaniels v. State*, __ So. 3d __, 2025 WL 2608688 [50 Fla. L. Weekly D2005a].

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that Defendant's Motion is **GRANTED** and the charge against Defendant in this matter is hereby **DISMISSED**.

[1]According to the arrest affidavit, Defendant was pulled over for having dark window tints. During the traffic stop, Defendant was asked if he had any weapons in the vehicle, and Defendant affirmed. After Defendant exited the vehicle, a semi-automatic handgun was observed wedged between the driver seat and the center console. No allegation was made that Defendant exhibited the firearm "in a rude, careless, angry, or threatening manner" in public, in contradiction to Section 790.10.

* * *

Insurance—Personal injury protection—Standing—Assignment—Motion to dismiss granted where plaintiff has not filed evidence of assignment of benefits in two years since suit was filed, and assignment attached to insurer's motion to dismiss assigns right to sue to physician in his individual capacity, not to plaintiff corporation—Court rejects parol evidence offered to explain intent of parties to assignment

NEDD CHIROPRACTIC & WELLNESS CENTER, INC., a/a/o Susan Elizabeth Silver, Plaintiff, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County, Small Claims Division. Case No. 23-CC-113534. Division V. August 22, 2025. Matthew A. Smith, Judge. Counsel: James R. Collins, FL Legal Group, Tampa, for Plaintiff. David B. Kampf, Kampf, Inman & Associates, P.A., Tampa, for Defendant.

ORDER OF DISMISSAL (ORDER GRANTING STATE FARM'S MOTION FOR INVOLUNTARY DISMISSAL)

THIS CAUSE, having come to be heard before the Court on Defendant's Motion for Involuntary Dismissal for Lack of Standing and Lack of Subject Matter Jurisdiction and the Court having heard argument of counsel, and being otherwise advised in the Premises, it is hereupon

ORDERED AND ADJUDGED that:

1. Plaintiff sues Defendant based on an alleged assignment of benefits ("AOB") transferring the right to sue from the patient to the Plaintiff. The Complaint does not attach the purported AOB.

2. Defendant moves for dismissal for lack of subject matter jurisdiction and lack of standing. Plaintiff asserts standing may not be raised via the current motion but must be heard via a motion for summary judgment with evidence. As expressed below, this Court disagrees with Plaintiff's argument and finds that dismissal is appropriate.

3. This Court agrees with State Farm that standing based on subject matter jurisdiction may be raised at any time. In fact, a summary judgment hearing on standing is not required as "the issue of standing may be raised by motion rather than by pleading an affirmative defense." See *Benz v. Fed. Home Loan Mortg. Corp*., 145 So.3d 943, (Fla. 2nd DCA 2024) [39 Fla. L. Weekly D1777b].[1]

4. It is not disputed by the defense that a complaint need not attach the AOB, however, the existence of an AOB conferring standing to the Plaintiff must be filed and/or evidence of the AOB transferring the right to sue must be in the court file. Here, nearly two years since suit was filed, no such AOB transferring to the Plaintiff the right to sue is contained in the Court file. Plaintiff has had every opportunity to file evidence of standing and subject matter jurisdiction but has failed to do so. Plaintiff has not presented proof of the existence of an AOB transferring the right to sue to Plaintiff.

5. Florida law is clear that without a valid written AOB transferring the right to sue from the patient and directed to the Plaintiff, the plaintiff/provider does not have standing to pursue suit. A provider may not stand in the shoes of the patient without an AOB transferring the right to sue as there is no subject matter jurisdiction.

6. This Court agrees with *Med. Rehab & Therapy Ctr., a/a/o Shannon Patterson v. State Farm Mut. Auto. Ins. Co.*, 8 Fla. L. Weekly Supp. 605a (Fla. 13th Jud. Appellate Cir. July 16, 2001), where the appellate court upheld the dismissal even after judgment in favor of the Plaintiff based on the lack of evidence of an AOB transferring to Plaintiff the right to sue. The Court provided:

> Appellant alleged in the complaint that it had an assignment of benefits but did not attach any documents to demonstrate such assignment. . .
>
> Without an assignment Appellant lacked standing, and the court, subject matter jurisdiction. . . . Appellant's argument that Appellee is precluded from raising the issue because a judgment had been entered is without merit. Florida courts have consistently held that subject matter jurisdiction is so vital to a court's power to adjudicate the rights of individuals that its absence can be questioned at any time, even after the entry of final judgment or for the first time on appeal. *84 Lumber Company v. Cooper*, 656 So.2d 1297 (Fla. 2d DCA 1994); *Stel-Den of America, Inc. v. Roof Structures, Inc.*, 438 So.2d 882, 884 (Fla. 4th DCA 1983).

7. In the current matter, a written AOB has not been filed. The mere allegation of being an assignee without any facts or evidence is insufficient. An assignment of benefits is significant because an "insurer forfeits his or her right to bring a lawsuit. It is well settled that "at any one time, only the insurer or the medical provider 'owns' the cause of action against the insurer for PIP benefits. See *Progressive Exp. Ins. Co. v. McGrath Community Chiropractic*, 913 So. 2d 1281 (Fla. 2nd DCA 2005) [12 Fla. L. Weekly Supp. 945a]. . at 1289. *See also Orozco Medical Center, Inc., a/a/o Juliet Garcia v. United Auto. Ins. Co.,* 16 Fla. L. Weekly Supp. 191a (December 16, 2008). Because of the significance of assigning the right to sue, it must be clearly delineated as to who owns the cause of action.

8. Therefore, dismissal of Plaintiff's case is warranted based on the lack of proof or evidence of a written AOB transferring to Plaintiff the right to sue.

9. In addition to the above, State Farm did not just rely on the lack of an AOB existing in the Court file. State Farm has brought to this Court's attention the document Plaintiff allegedly relies upon for subject matter jurisdiction. The Court has jurisdiction to review the document per *Steiner Transocean Ltd. v. Efremova,* 109 So. 3d 871 (Fla. 3rd DCA 2013) [38 Fla. L. Weekly D604c]. (As a general rule, when considering a motion to dismiss, a trial court is limited to the allegations within the four corners of the complaint and any attachments. However, there are several exceptions to this general rule. For example, a court is permitted to consider evidence outside the four corners of the complaint where the motion to dismiss challenges subject matter jurisdiction or personal jurisdiction.) Furthermore, in the current matter, the purported AOB is attached to State Farm's Affidavit and Plaintiff's Notice of Filing Declaration of Dr. Stephen Nedd. Based on the foregoing, this Court may review the purported AOB.

10. Plaintiff agrees that the document presented to this Court is the only document relied upon by Plaintiff to confer standing and subject matter jurisdiction.

11. The purported AOB provides:

> "MEDICAL PROVIDER: DR. STEPHEN NEDD
> INSURANCE COMPANY: State Farm
>
> I hereby irrevocably assign to the aforementioned medical provider (the "Provider") any Personal Injury Protection benefits I may have in accordance with Florida State 627.736(5). . . . and I Authorize the "Provider" to prosecute said action . . . .

12. The document does not reference Plaintiff in any manner whatsoever. The evidence presented during hearing clearly establishes that Dr. Stephen Nedd is a separate and distinct person/entity than Plaintiff, NEDD CHIROPRACTIC & WELLNESS CENTER, INC. In fact, Plaintiff does not dispute that it is a legal ongoing corporation.

13. Based on the plain language of the document, it is clear the agreement is between the patient and Dr. Stephen Nedd in his individual capacity. To the extent there is a transfer of a right to sue to any person or entity per this document, no reasonable reading could determine a transfer to the Plaintiff was created.

14. This Court agrees with and finds persuasive *Six Doctors Med. Ctr. Inc. (a/a/o Robin Vandina v. State Farm*, 19 Fla. L. Weekly Supp. 164a (17th Judicial Cir. App. 2011) (there was no question that Ms. Vandina assigned her rights to Dr. Paul Fulton, D.C., yet the underlying action was brought by Six Doctors Medical Center, Inc., that was not an assignee.); and *South Fla. Ortho. Assoc. a/a/o Oscar Paramo v. State Farm Mutual Auto. Ins. Co.,* 25 Fla. L. Weekly Suppl. 87b (11th Jud. Cir. March 10, 2017) which relied on the opinion in Six Doctors Medical Center to determine that the purported assignment was for the benefit of Harlan S. Chiron, M.D. and not to the Plaintiff herein. The Court in *South Florida* determined it was the intent of the parties to assign the policy of insurance to Harlan S. Chiron M.D., individually and not the corporation. The fact that the doctor may be an employee or shareholder of the Plaintiff was irrelevant. Also see *Leonard Linardos, D.C., P.A., a/a/o LaTanya Cross v. United Services Auto. Assoc*., 15 Fla. L. Weekly Supp. 613a (6th Judicial Cir. 2008)(A doctor cannot use an assignment of benefits obtained in his individual capacity to create standing for the doctor's corporation. *Vincent Preziosi, D.C. v. Progressive Express Ins. Co*., 12 Fla. L. Weekly Supp. 571a (9th Cir. Orange Cty. March 8, 2005); *Dr. Thomas J. Crowell, D.C., P.A. v. Progressive Express Ins. Co.*, 12 Fla. L. Weekly Supp. 164b (17th Cir. Broward Cty. November 9, 2004).)

15. This Court also finds that Plaintiff's attempt to rely on a Declaration by Dr. Stephen Nedd as to the intent of the parties to the agreement must fail. This Court may not rely on Parole evidence to rewrite the agreement. Where no ambiguity exists on the face of the assignment, the Court may not rely on parole evidence to explain, elucidate, or clarify the intention of the parties. *Gulf Coast Ctr. LLC, a/a/o Russ v. Prog. Select Ins. Co.*, 30 Fla. Law Weekly Supp. 382a (Fla. 13th Jud. Cir. August 16, 2022), *citing Treasure Salvors, Inc. v. Tilley*, 534 So. 2d 834, 836 (Fla. 2d DCA 1988)). As such, the question of whether the written assignment of benefits insufficient to confer standing to the Plaintiff under the PIP statute is purely a matter of law, to be determined based on the plain language of the document itself. *See Advanced 3-D Diagnostics a/a/o Ziky Jeannestin v. State Farm Fire and Cas. Co.,* 20 Fla. L. Weekly Supp. 1082a (Fla. 9th Jud. Cir., Orange Cty. Ct., July 23,2013); *Open MRI of Orlando, Inc. a/a/o Raquel Ramos*, 17 Fla. L. Weekly 731a (Fla. 9th Jud. Cir. (App.), April 16, 2010). Therefore, the plain language of the document controls.

16. The purported AOB at issue unambiguously provides that any transfer of the right to sue is bestowed to the Dr. Stephen Nedd, individually, not Plaintiff. Plaintiff asserts this Court may not "interpret" or address the language of the AOB unless it is clear the document is "repugnant" on its face as to transferring any rights to Plaintiff. Whether this Court agrees with Plaintiff's assertion or phrasing of the law, it is irrelevant as this Court finds the document on its face is repugnant to a finding that the AOB is to the Plaintiff.

17. Based on the above facts and other points raised during hearing, this Court finds the purported AOB was for the benefit of Dr. Stephen Nedd, individually, not Plaintiff. That Plaintiff is a separate and distinct entity from the individual doctor. Plaintiff is not an assignee of the right to sue.

18. Therefore, Plaintiff is not legally competent and lacks standing to pursue this cause of action. There is no subject matter jurisdiction for Plaitiff to continue with this cause of action.

19. Further, hearing this argument on summary judgment will not impact or alter this ruling as the purported document is clear on its face. The intent is clear. No testimony or other evidence may be presented or relied upon to invalidate or change the terms/parties to the AOB.

20. As a result, Defendant's motion for involuntary dismissal is

hereby granted *In Toto*. Plaintiff shall take nothing from this action and Defendant shall go hence without a day.

21. The Court reserves jurisdiction to address entitlement and reasonableness of Defendant's attorneys' fees and costs.

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[1]The issue here is not standing based on whether a legally sufficient pre-suit demand letter was submitted per the No-fault statute, but whether there is jurisdiction in the first place.

* * *

Insurance—Personal injury protection—Coverage—Medical expenses—Nurse practitioners—No merit to argument that plaintiff, who is licensed as both chiropractic physician and nurse practitioner, should be reimbursed as if his services were provided by physician, not nurse practitioner, where plaintiff could only lawfully make emergency medical condition determination under nurse practitioner license—PIP insurer is permitted to apply Medicare nurse practitioner 15% reduction to reimburse dually-licensed plaintiff who provided services under nurse practitioner license

REVIVE HEALTH ASSOCIATES, LLC, a/a/o Jeannine Locklear, Plaintiff, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County. Case No. 23-CC-119558. Division O. October 7, 2025. Christopher E. Brown, Judge. Counsel: David M. Caldevilla, de la Parte, McNamara & Caldevilla, P.A., Tampa; and Ben A. Kincer, Morgan & Morgan, Tampa, for Plaintiff. David B. Kampf, Kampf, Inman & Associates, Tampa; and Stephen Bell, Hamilton, Miller & Birthisel, Tampa, for Defendant.

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (DOC. 20), AND GRANTING DEFENDANT'S SECOND AMENDED MOTION FOR SUMMARY JUDGMENT (DOC. 51)

THIS CAUSE, having come before the Court on September 29, 2025, for a hearing on Plaintiff's *Motion for Summary Judgment, or Partial Summary Judgment, concerning Nurse Practitioner Payment Guidelines* (Doc.20), and Defendant's *Second Amended Motion for Final Summary Judgment Based on Proper Payment of No-Fault Benefits due at ARNP/APRN payment limitation; and State Farm's Opposition to Plaintiff's Motion for Summary judgment and Memorandum of Law* (Doc.51). Having heard argument of counsel, reviewed the record and filings, and being otherwise advised in the Premises, the Court finds:

UNDISPUTED FACTS

The Parties entered into a *Joint Stipulation of Facts*, (Doc. 51, p. 32-35), which acknowledges, inter alia, the following undisputed facts: On December 25, 2022, Jeannine Locklear ("Insured"), was injured in an automobile accident and thereafter treated with Sun Life Chiropractic. The treating chiropractor at Sun Life referred her to Revive Health Associates, LLC ("Plaintiff"), to determine whether she sustained an Emergency Medical Condition ("EMC"), under the Florida no-fault law[1] as well as to consider the need for prescription pain medication.

On January 23, 2023, Insured had an appointment with Plaintiff, and was seen via telehealth by Rajnarine Roopnarine ("Provider"). At all relevant times, Provider held two healthcare licenses including an Advance Practice Registered Nurse ("APRN") license pursuant to Chapter 464 and a Doctor of Chiropractic ("DC") pursuant to Chapter 460. Provider, "as a 'board-certified family nurse practitioner/ advanced practice registered nurse licensed under chapter 464' " (Doc. 51, p. 34, ¶ 8), determined that Insured sustained an EMC.[2]

Provider timely submitted a bill for $250.00 to Defendant for the single visit and service, identified as CPT Code 99203 with modifier 95 and place of service code 11. Defendant paid Provider as an APRN, and not as a DC, the amount of $153.95, or 85% of 200% of the Medicare Part B Participating fee schedule in effect on March 1, 2022. (Doc. 51, p. 37-38). The Parties agree that the proper amount was paid by Defendant should the APRN payment limitation apply.

LITIGATION

Plaintiff's breach of contract claim is brought under Defendant's automobile insurance policy for personal injury protection benefits, and claims that Defendant failed to appropriately pay benefits due in accordance with Florida law and the policy.

Plaintiff's *Motion for Summary Judgment, or Partial Summary Judgment, concerning Nurse Practitioner Payment Guidelines* (Doc.20), argues that Defendant was not authorized to apply the additional 15% reduction to the allowable amount otherwise payable under Florida Statute § 627.736(5)(a)1.f(I), for services rendered by an APRN.

Defendant's *Second Amended Motion for Final Summary Judgment Based on Proper Payment of No-Fault Benefits due at ARNP/APRN payment limitation; and State Farm's Opposition to Plaintiff's Motion for Summary judgment and Memorandum of Law* (Doc.51), argues that Defendant was allowed to limit their reimbursement for Provider's services pursuant to its policy and Florida's no-fault statute.

ANALYSIS

Defendant's insurance policy validly provides a notice of election to use the schedule of maximum charges as a limitation, including Medicare coding policies and payment methodologies.[3] *State Farm v. MRI Assoc. of Tampa, Inc.*, 252 So. 3d 773 (Fla. 2d DCA 2018) [43 Fla. L. Weekly D1149a]; *State Farm v. Stand Up MRI of Boca Raton, P.A.*, 322 So. 3d 87 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D1210a].

Defendant's Explanation of Benefits states that the payment was reduced because "[t]his service was rendered by a nurse practitioner. Recommended allowance per Medicare guidelines is 85% of the applicable Medicare Participating Physician Fee Schedule. (Reference: Medicare Claims Processing Manual, Chapter 12, Section 120)." (Doc. 51, p. 38).

Plaintiff argues that Defendant is not authorized to apply an additional 15% reduction to the allowable amount otherwise payable (i.e., 80% of 200% of the participating physicians fee schedule amount pursuant to Florida Statute § 627.736(5)(a)1.f(I)), for services rendered by a nurse practitioner. Plaintiff further argues that, even if Defendant is allowed to apply an additional 15% reduction to the allowable amount, Defendant cannot do so in this case because Provider, who performed the services as an APRN, is also a licensed DC.

However, the only license under which Provider could have "lawfully provided care or treatment" in making the EMC determination was his APRN license, not his DC license. Therefore, the "scope" of Provider's license in this case for purposes of § 627.736(5)(a)3., is the APRN license.

Plaintiff argues that § 627.736(5)(a)3., prohibits an insurer from reimbursing PIP benefits based on Medicare restrictions or limitations on the type of discipline of heath care providers, and relies on, inter alia, *AFO Imaging, Inc. v. Peak Property & Cas. Ins. Corp.*, 17 Fla. Law Weekly Supp. 368a (Fla. 13th Jud. Cir. Ct. Jan. 25, 2010). Plaintiff further argues that Defendant's interpretation of the applicable payment amount would rewrite the plain language of the statute and violate various canons of statutory construction. A similar argument was rejected in *State Farm v. Stand Up MRI of Boca Raton,* 322 So. 3d 87, 93 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D1210a].

When interpreting a statute such as § 627.736, this Court is required "to give effect to every clause in it, and to accord meaning and harmony to all of its parts and [it] is not to be read in isolation, but in the context of the entire section." *Fla. Dept of Env. Prot. v. ContractPoint*, 986 So. 2d 1260, 1265 (Fla. 2008) [33 Fla. L. Weekly

S493a].

In analyzing § 627.736(5)(a), the Fourth District Court of Appeal found that the subparagraphs must be read together to achieve a consistent whole. *State Farm v. Stand Up MRI of Boca Raton*, 322 So. 3d 87, 92 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D1210a]. However, when read together, with meaning ascribed to every portion of the statute, § 627.736(5)(a)2., does not establish a "floor" or limitation for reimbursing PIP benefits. *State Farm v. Stand Up MRI of Boca Raton,* 322 So. 3d 87, 93 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D1210a]. Instead, § 627.736(5)(a)3., permits insurers to use Medicare coding policies and payment methodologies to reduce the reimbursement amount for PIP benefits below the applicable amount in the 2007 Medicare Part B schedule. *State Farm v. Stand Up MRI of Boca Raton,* 322 So. 3d 87, 94 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D1210a]. That Court wrote:

> [T]he schedule of maximum charges is simply a base rate that may be adjusted downwards by applying Medicare coding policies and payment methodologies, such as the [coding policy at issue], to determine the appropriate amount of reimbursement. *State Farm v. Stand Up MRI of Boca Raton*, 322 So. 3d 87, 93 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D1210a].

This Court is bound to follow and apply the analysis of *State Farm v. Stand Up MRI of Boca Raton* in this case. The APRN reduction at issue, like the Medicare Multiple Procedure Payment Reduction in *State Farm v. Stand Up MRI of Boca Raton*, is a Medicare coding policy or payment methodology. The plain text of the third sentence of § 672.536(5)(a)3., permits an insurer to use such a coding policy or payment methodology to reduce the reimbursement amount below the applicable amount under the 2007 Medicare Part B schedule, so long as the coding policy or payment methodology does not constitute a "utilization limit." Nothing in § 672.536(5)(a)3., suggests that the fee schedule amount is a floor below which Defendant may not proceed when applying applicable Medicare coding policies or payment methodologies.

In this case, it is undisputed that Provider performed services during the single encounter with Insured that may only be lawfully rendered under his APRN license. Applicable Medicare coding policies permit a 15% reduction in services which are performed by a non-physician such as an APRN. Therefore, as a matter of law, Defendant's reduction in payment of 15% pursuant to Medicare coding policies was not a breach of Defendant's policy and Defendant paid all that was due and proper under its policy and Florida Statute § 627.736.

Accordingly, it is hereby ORDERED AND ADJUDGED:

1. Plaintiff's *Motion for Summary Judgment, or Partial Summary Judgment, concerning Nurse Practitioner Payment Guidelines* (Doc.20), is DENIED;

2. Defendant's *Second Amended Motion for Final Summary Judgment Based on Proper Payment of No-Fault Benefits due at ARNP/APRN payment limitation; and State Farm's Opposition to Plaintiff's Motion for Summary judgment and Memorandum of Law* (Doc.51), is GRANTED;

3. Final judgment is entered in favor of Defendant and against Plaintiff;

4. The Court reserves jurisdiction to determine any claims for attorneys' fees and costs.

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[1]Florida's No-Fault law requires that a determination of an EMC be rendered by a physician licensed under Chapter 458 or Chapter 459; a dentist licensed under Chapter 466; a physician assistant licensed under Chapter 458 or Chapter 459; or an advanced practice registered nurse licensed under Chapter 464. Without a written determination of an EMC by a properly licensed individual, personal injury protection benefits are limited to $2,500. Florida Statute § 627.736(1)(a)4. A DC cannot render a written EMC determination pursuant to the Florida No-Fault law.

[2]Provider's treatment notes state, inter alia, "EMERGENCY MEDICAL CONDITION. . . I am a board-certified family nurse practitioner/autonomous advanced practice registered nurse licensed under chapter 464. I examined the patient and determined that injuries were sustained resulting from the motor vehicle collision and the patient will require treatment for these conditions. . .I have determined that the patient had an emergency medical condition." (Doc. 51, p. 149-150).

[3]Defendant's insurance policy provides that: "We will limit payment of Medical Expenses described in the Insuring Agreement of this policy's No-Fault Coverage to 80% of a properly billed and documented reasonable charge, but in no event will we pay more than 80% of the following No-Fault Act "schedule of maximum charges" including the use of Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers." (Doc. 51, p. 87).

* * *

Insurance—Automobile—Windshield repair—Insurer's motion for summary judgment is denied where insurer paid for windshield repair in amount less than appraisal award in reliance on policy's limit-of-liability provision that caps its obligation at scheduled amount, but insurer failed to provide admissible evidence of facts needed to prove compliance with schedule—Insurer's supporting affidavit setting forth bare summaries of file contents and conclusory assertions of policy compliance fails to satisfy rule 1.510(c)(4), and business records foundation for key items is deficient—Further, appraisal award is binding as to amount of loss and creates at least a triable dispute as to remainder of benefits due—Clause providing that scheduled pricing would become null and void if contract pricing changes also raises fact questions precluding summary judgment

AUTO GLASS AMERICA, LLC, a/a/o Michael Johns, Plaintiff, v. AMICA PROPERTY AND CASUALTY INSURANCE COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County. Case No. 21-CC-110914. Division L. October 10, 2025. Michael C. Baggé-Hernández, Judge. Counsel: Anthony T. Prieto, Morgan & Morgan, Tampa; and David M. Caldevilla, de la Parte, Gilbert, McNamara & Caldevilla, P.A., Tampa, for Plaintiff. Sofia Marescalco and Nicholas A. Leroy, Cole, Scott & Kissane, P.A., Plantation, for Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER comes before the Court on Defendant's Motion for Summary Judgment filed June 25, 2025 (Doc. 89). The Court has considered the Motion and evidentiary materials filed in support, Plaintiff's Response in Opposition filed August 1, 2025 (Doc. 96), the pleadings, prior orders of this Court, the insurance policy and endorsements placed in the record, the appraisal award, and the arguments of counsel presented at the October 9, 2025, hearing. For the reasons that follow, Defendant's Motion is DENIED.

I. BACKGROUND AND PROCEDURAL POSTURE

A. Nature of the case.

This is a one-count breach-of-contract action arising from payment of a covered windshield loss under a Florida personal automobile policy. Plaintiff Auto Glass America, LLC ("AGA"), as assignee of insured Michael Johns, alleges Defendant Amica Property and Casualty Insurance Company ("Amica") underpaid the claim. (Doc. 96 at 1-2.) Amica admits coverage but contends its limit-of-liability/payment-schedule endorsement caps what it owes and that it paid that amount in full. (Doc. 89 at 3-5; Doc. 18 at 4).

B. Governing procedural rules.

Although the lawsuit originated as a "county civil"/small-claims matter, it is governed by the Florida Rules of Civil Procedure, not the Small Claims Rules, for windshield litigation filed on or after May 1, 2021. The Thirteenth Circuit's Administrative Order provides: "In accordance with Florida Small Claims Rule 7.020, all rules of the Florida Rules of Civil Procedure apply to . . . windshield litigation cases. ... This provision only applies to windshield cases filed on and after May 1, 2021, and will not be applied retroactively to windshield cases filed prior to May 1, 2021." (Doc. 96 at 2 (*quoting* Admin. Order

S-2024-039, Fla. 13th Jud. Cir. (Apr. 30, 2024)). Accordingly, the summary-judgment standards of Rule 1.510 control. *See also* Standing Orders regarding motion practice (Docs. 66, 80).

C. Prior motions; appraisal.

Amica previously moved for summary judgment twice (Docs. 23, 45). In April 2025, the Court struck the affidavit of Ken Oshida and denied the second motion for summary judgment because Amica failed to present competent, admissible evidence for its limit-of-liability defense. (Doc. 74.) Meanwhile, Plaintiff noticed appraisal under the policy (Doc. 42), the Court granted the motion to compel appraisal (Doc. 56), and a Glass Appraisal Award issued on February 17, 2025, in the amount of $1,678.27 (exclusive of sales tax). (Doc. 96, Ex. D (Appraisal Award)).

D. Payment and dispute.

Amica issued payment of $1,339.54 (exclusive of sales tax) for the windshield claim. (Doc. 89, Ex. A3; Doc. 89 at 3-4; Doc. 96 at 21-22.) The award and payment leave an unpaid difference of $338.73 (exclusive of sales tax). (Doc. 96 at 21-22.) Plaintiff's counsel asked whether Amica would pay the award; Amica's representative responded, "Our client does not intend on paying the award." (Doc. 96, Ex. E (email dated Mar. 6, 2025)).

E. Third motion for summary judgment.

Amica's present motion again argues it paid exactly what the policy requires—no more, no less—under its Florida endorsement FL 00 12 01 21 (payment schedule), and that therefore no breach can be shown as a matter of law. (Doc. 89 at 3-8.) In support, Amica relies on: (i) an affidavit of its designated corporate representative, Coly Eldridge, with attachments (policy, invoice, check, and internal payment breakdowns); and (ii) the text of the policy endorsements. (Doc. 89, Ex. A).

II. THE CONTROLLING TEXTS

This Court's analysis is textual. The words of the governing instruments—the Rules, the Evidence Code, and the Policy—control. Where those texts are clear, we enforce them as written. Where they incorporate standards from judicial decisions, we look to those decisions for the meaning of the words actually enacted or adopted. *See generally State Farm Fire & Cas. Co. v. CTC Dev. Corp.*, 720 So. 2d 1072, 1076 (Fla. 1998) [23 Fla. L. Weekly S527a] (insurance contracts are construed "in accordance with the plain language of the policy"); *Washington Nat'l Ins. Corp. v. Ruderman*, 117 So. 3d 943, 948-49 (Fla. 2013) [38 Fla. L. Weekly S511a] (ambiguous insurance text construed against the insurer).

A. Rule 1.510—Florida's Summary Judgment Standard

Rule 1.510(a) states in relevant part: "A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." (Fla. R. Civ. P. 1.510(a)).

Rule 1.510(c)(4) provides: "An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." (Fla. R. Civ. P. 1.510(c)(4)).

Rule 1.510(f) authorizes relief independent of the motion: "After giving notice and a reasonable time to respond, the court may: (1) grant summary judgment for a nonmovant; (2) grant the motion on grounds not raised by a party; or (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute." (Fla. R. Civ. P. 1.510(f).)

In *In re Amendments to Florida Rule of Civil Procedure 1.510*, the Florida Supreme Court aligned Florida's summary-judgment practice with federal Rule 56, explaining: "We amend Florida's summary judgment rule to align the rule with the federal summary judgment standard. We do this to remedy problems arising from the substantive and textual differences between Florida's summary judgment standard and the standard used in the federal courts." *In re Amendments to Fla. R. Civ. P. 1.510*, 317 So. 3d 72, 74 (Fla. 2021) [46 Fla. L. Weekly S95a].

Under that standard, the movant must identify portions of the record showing "an absence of evidence to support" the nonmovant's case on an element as to which the nonmovant bears the burden, or otherwise establish that no genuine dispute of material fact exists. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). The court views the evidence in the light most favorable to the nonmovant and "all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *see Tolan v. Cotton*, 572 U.S. 650, 657 (2014) [24 Fla. L. Weekly Fed. S731a] (per curiam). Florida's district courts echo these requirements. *E.g., Baum v. Becker & Poliakoff, P.A.*, 351 So. 3d 185, 189 (Fla. 5th DCA 2022) [47 Fla. L. Weekly D2374a] ("Until the moving party has met that burden, the non-moving party is not obliged to prove or disprove anything."); *Casey v. Mistral Condo. Ass'n, Inc.*, 380 So. 3d 1278, 1284-85 (Fla. 1st DCA 2024) [49 Fla. L. Weekly D552a] (movant must show "that there is an absence of evidence to support" an element of the nonmovant's case). (Doc. 96 at 2-4 (collecting authorities)).

Separately, the rule expressly restricts the summary-judgment record to evidence that would be admissible at trial or can be presented in admissible form. *See* Fla. R. Civ. P. 1.510(c)(2)-(4).

B. Florida Evidence Code—Hearsay, Business Records, Personal Knowledge

The Evidence Code governs whether proffered materials may be considered at summary judgment.

- Hearsay defined; hearsay rule. "Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." § 90.801(1)(c), Fla. Stat. "Except as provided by statute, hearsay evidence is inadmissible." § 90.802, Fla. Stat.
- Business records exception. A record may be admissible as a business record if: "A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinion, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make such a memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the sources of information or other circumstances show lack of trustworthiness." § 90.803(6)(a), Fla. Stat. (emphasis added).

Domestic business records may also be authenticated by certification. *See* § 90.902(11), Fla. Stat.

- Personal knowledge and "best evidence." "A witness may not testify to a matter unless evidence is introduced which is sufficient to support a finding that the witness has personal knowledge of the matter." § 90.604, Fla. Stat. "Except as otherwise provided by statute, an original writing, recording, or photograph is required in order to prove the contents of the writing, recording, or photograph." § 90.952, Fla. Stat. And hearsay within hearsay is inadmissible unless "each part of the combined statements" meets an exception. § 90.805, Fla. Stat.

Florida's appellate courts consistently enforce these principles at summary judgment. *See, e.g., Roberts v. Direct Gen. Ins. Co.*, 337 So. 3d 889, 891 (Fla. 2d DCA 2022) [7 Fla. L. Weekly D737b] (business-records exception "does not authorize hearsay testimony concerning

the contents of business records which have not been admitted"); *Heller v. Bank of Am., NA*, 209 So. 3d 641, 645 (Fla. 2d DCA 2017) [42 Fla. L. Weekly D277b] (improper to permit corporate representative to testify about contents of unadmitted records); *Ginsberg v. Nw. Med. Ctr., Inc.*, 14 So. 3d 1250, 1252 (Fla. 4th DCA 2009) [34 Fla. L. Weekly D1349a] (trial court erred by considering a purported business record where predicate not laid); *Brown v. Regan*, 368 So. 3d 3, 4 (Fla. 4th DCA 2023) [48 Fla. L. Weekly D1249a] (unauthenticated documents and testimony not based on personal knowledge cannot support summary judgment). *See also Mesa v. Citizens Prop. Ins. Corp.*, 358 So. 3d 452, 455-56 (Fla. 3d DCA 2023) [48 Fla. L. Weekly D465a] (corporate representative procedure is a discovery mechanism, not a hearsay exception). (See Doc. 96 at 3-4, 12-20 (collecting and discussing authorities)).

C. The Insurance Contract—Text that Governs Payment

Defendant's motion attaches a document it contends is the Johns' policy and endorsements (Doc. 89, Ex. A). Solely to identify the provisions Defendant invokes—and without determining admissibility or applicability—the Court notes the following excerpts:

• Insuring Agreement (Part D—Coverage for Damage to Your Auto):

"We will pay for direct and accidental loss to your covered auto or any non-owned auto, including their equipment, minus any applicable deductible shown in the Declarations. ..." (Doc. 89, Ex. A at 47).

• Limit of Liability (Part D):

"A. Our limit of liability for loss will be the lesser of the: (1) Actual cash value of the stolen or damaged property; or (2) Amount necessary to repair or replace the property with other property of like kind and quality." (Doc. 89, Ex. A at 50).

• Payment of Loss (Part D):

"We may pay for loss in money or repair or replace the damaged or stolen property. ... If we pay for loss in money, our payment will include the applicable sales tax for the damaged or stolen property." (Doc. 89, Ex. A at 50).

• Amendment of Policy Provisions—Florida (PP 01 84 01 21), Part D addition (windshield without deductible):

"We will pay under Other Than Collision Coverage for the cost of repairing or replacing the damaged windshield on your covered auto . . . without a deductible. We will pay only if the Declarations indicates that Other Than Collision Coverage applies." (Doc. 89, Ex. A at 68 (section IV.A)).

• Appraisal (as amended by PP 01 84 01 21):

"A. If we cannot agree with you on the amount of a loss, then we or you may demand an appraisal of the loss. If we or you demand appraisal, the demand for appraisal must be in writing and shall include an estimate of the amount of any dispute that results from the covered cause of loss . . . ." (Doc. 89, Ex. A at 68-69).

"C. For the purposes of this section, 'loss', 'amount of a loss' and 'amount of loss' shall mean the lesser of: (a) the 'actual cash value of the stolen or damaged property', and (b) the 'amount necessary to repair or replace the property with other property of like kind and quality'." (Doc. 89, Ex. A at 69).

"D. Within 30 days of any demand for an appraisal, each party shall appoint a competent and impartial appraiser . . . If they fail to agree on the amount of loss, the disagreement will be submitted to a qualified umpire . . ." (Doc. 89, Ex. A at 69).

"The amount of loss agreed to by both appraisers, or by one appraiser and the umpire if one is selected, will be binding." (Doc. 89, Ex. A at 69 (emphasis added)).

"H. Neither we nor you waive any rights under this policy by agreeing to an appraisal." (Doc. 89, Ex. A at 70).

• Amendment of Personal Auto Policy Provisions—Florida (FL 00 12 01 21): windshield payment schedule:

"With respect to the coverage provided by this endorsement, the provisions of the policy apply unless modified by the endorsement." (Doc. 89, Ex. A at 74.)

"Unless otherwise agreed to by us and your shop of choice, our limit of liability for losses involving only glass breakage or glass damage will be: Windshield Replacement and Repairs: Windshield Glass: 55% of the National Auto Glass Specifications List Price for Territory A/B; 65% . . . for Territory C; and 75% É for Territory D/E of the pricing as set forth in the National Auto Glass Specifications on the date the approved installation occurs. Windshield Replacement Labor Rate: $37.00 per recommended labor hour as set forth in the National Auto Glass Specifications on the date the approved installation occurs.

High Modulus/Non-Conductive: $15 per kit as required by the National Auto Glass Specifications All Other Urethanes: $15 per kit as required by the National Auto Glass Specifications Molding Manufacturer's list pricing for like kind and quality molding on the date the approved installation occurs.

Windshield Repairs—Excluding Replacement: $65.00 per windshield.

At your request, we will identify a qualified glass repair facility in your area that will perform the repairs at the price shown on the schedule. The prices shown on the schedule are the current contracted prices with our network participants. Should the contract pricing change, the scheduled pricing shown here will become null and void. Territories are established by the Office of Management and Budget of the Federal Government." (Doc. 89, Ex. A at 74-75 (emphases added)).

Accordingly, the Court references these policy and endorsement provisions solely to frame the issues raised on the present motion. Whether the proffered documents are authenticated and applicable—and whether Defendant has, with admissible record materials, established the factual predicates required by the schedule (including the pertinent OMB territory, NAGS list prices and hours, adhesive-kit and molding list prices, and any "current contracted prices" that would render the schedule "null and void")—are questions reserved for the analysis below under Rule 1.510. *See In re Amendments*, 317 So. 3d at 74-76; *Celotex*, 477 U.S. at 325; *State Farm Fire & Cas. Co. v. Licea*, 685 So. 2d 1285, 1288 (Fla. 1996) [21 Fla. L. Weekly S543a]; (Doc. 89, Ex. A at 69-70, 74-75).

III. THE DISPOSITIVE LEGAL QUESTIONS AND BURDENS

A. Who bears the burden?

Amica admits a covered loss and payment of $1,339.54. (Doc. 89 at 3-5). It contends no further payment is owed because the payment-schedule endorsement caps its limit of liability for this windshield claim at the amount paid. (Doc. 89 at 4-8). This is an avoidance—an affirmative defense that seeks to limit the amount otherwise owed under the contract. Under Florida law, the insurer bears the burden to plead and prove the applicability of such a limitation or exclusion. *See State Farm Mut. Auto. Ins. Co. v. Curran*, 135 So. 3d 1071, 1076-79 (Fla. 2014) [39 Fla. L. Weekly S122a] (treating insurer's compliance/avoidance as an affirmative defense on which the insurer bears the burden); *St. Paul Mercury Ins. Co. v. Coucher*, 837 So. 2d 483, 487 (Fla. 5th DCA 2002) [28 Fla. L. Weekly D131b]; *Herrera v. C.A. Seguros Catatumbo*, 844 So. 2d 664, 668 (Fla. 3d DCA 2003) [28 Fla. L. Weekly D853a]; *see also Soler v. Kukula*, 297 So. 2d 600, 601 (Fla. 3d DCA 1974). (Doc. 96 at 10-12). Accordingly, to prevail on summary judgment, Amica must show conclusively that (1) the endorsement applies to this claim; and (2) Amica complied with it, such that $1,339.54 represents the full contractual amount owed.

B. What is the effect of the appraisal award?

The parties invoked appraisal; the Court compelled it; and a written Glass Appraisal Award issued on February 17, 2025, in the amount of

$1,678.27 (exclusive of sales tax). (Doc. 96, Ex. D). The award itemizes Glass $742.64, Other $595.63 (including Adhesive $60, Moulding $36.63, Calibration $499.00), and Labor $340.00, for a Total $1,678.27, and expressly states it does not include sales tax. (Doc. 96, Ex. D (Appraisal Award)). By the policy's own terms, "[t]he amount of loss agreed to by both appraisers, or by one appraiser and the umpire . . . will be binding." (Doc. 89, Ex. A at 69). Florida law treats appraisals as binding determinations of the amount of loss, leaving coverage defenses to the courts. *See Licea*, 685 So. 2d at 1288 (the appraisal award is binding "as to the amount of damage," not as to coverage).

Amica contends that, even accepting the award, the limit-of-liability endorsement caps its payment obligation at the schedule amount reflected in its payment of $1,339.54. That may be a colorable position, but it is one Amica must prove with admissible evidence and undisputed facts to obtain summary judgment. As explained below, Amica has not carried that burden on this record.

IV. ANALYSIS

A. **The summary-judgment record does not conclusively establish compliance with the payment schedule**.

Amica's motion turns on its assertion that it calculated and paid the schedule amount exactly as specified in FL 00 12 01 21: an appropriate territory-specific percentage of the NAGS list price for the glass; $37.00 per NAGS recommended labor hour; $15 per adhesive kit; manufacturer's list price for required molding; and so on, "on the date the approved installation occurs." (Doc. 89, Ex. A at 74-75). To prove compliance, the record needed to show, with admissible evidence: (1) which OMB territory applied (A/B, C, or D/E); (2) the NAGS list price of the specific windshield used on the date of installation; (3) the NAGS-recommended labor hours for that installation; (4) how many adhesive kits were required by NAGS; (5) whether molding was replaced and its manufacturer list price; and (6) a calculation transparently matching those inputs to the $1,339.54 paid. The present record does not supply these facts in an admissible, undisputed way.

Amica relies almost entirely on the Eldridge Affidavit and attachments. (Doc. 89, Ex. A). But the affidavit does not identify the applicable territory, does not identify the NAGS part number or list price, does not state the NAGS labor hours, and does not explain the arithmetic leading to $1,339.54 under the endorsement. Rather, it appends a "Payment Breakdown" (Ex. A5) and "Check Breakdown" (Ex. A4) that appear to be internal records or screen-captures summarizing what someone concluded should be paid, without laying the necessary foundation for the underlying facts on which those conclusions rest. (Doc. 89, Ex. A4-A5).

On its face, the affidavit is equivocal about personal knowledge: Mr. Eldridge avers he has "personal knowledge" or "obtained knowledge . . . by reviewing documents kept in the claim file for this litigation matter, the underlying insurance claim, and related insurance policy." (Doc. 89, Ex. A at 18-19 (¶5) (emphasis added)).

Summary-judgment affidavits must be based on personal knowledge and set out admissible facts; bare summaries of file contents or conclusory policy-compliance assertions do not suffice. *See* Fla. R. Civ. P. 1.510(c)(4); *Roberts*, 337 So. 3d at 891; *Heller*, 209 So. 3d at 645; *Brown*, 368 So. 3d at 4. Mr. Eldridge's declaration that "payment was issued . . . totaling $1,339.54 pursuant to the terms of the subject policy" is a legal conclusion on the ultimate issue, not a competent fact. (Doc. 89, Ex. A at 20 (¶10)). Affidavits that simply state ultimate facts or conclusions—without providing supporting facts—are insufficient. *See Daeda v. Blue Cross & Blue Shield of Fla., Inc.*, 698 So. 2d 617, 619 (Fla. 2d DCA 1997) [22 Fla. L. Weekly D2061a].

Further, the business-records foundation is deficient for multiple key items. The invoice (Ex. A2) was created by Plaintiff, not Amica; the "payment breakdown" (Ex. A5) appears to embody information from NAGS publications and/or a third-party administrator (the record references Safelite/SGC Network) rather than Amica's own firsthand knowledge. (Doc. 96 at 16-18 (noting the SGC/Safelite involvement and the absence of a proper foundation)). The Response to Supplemental Requests for Admissions reflects that Amica "relies on a third party to access information published by National Auto Glass Specifications ('NAGS')." (Doc. 88 at ¶8). Yet Amica submitted no sworn testimony from that third party and no authenticated NAGS record establishing the actual list price or labor hours for the specific windshield on the specific date at issue. See §§ 90.803(6), 90.902(11), *Fla. Stat.; Jackson v. Household Fin. Corp. III*, 236 So. 3d 1170, 1172 (Fla. 2d DCA 2018) [43 Fla. L. Weekly D261b], *approved*, 298 So. 3d 531 (Fla. 2020) [45 Fla. L. Weekly S205a] (one business's employee cannot, without more, establish the business-records predicate for documents created by a different entity); *Mesa*, 358 So. 3d at 455-56. Amica's "breakdowns" thus amount to hearsay within hearsay when offered to prove the truth of the NAGS inputs, and they fall short of the best-evidence requirements when used to prove the contents of NAGS publications. §§ 90.805, 90.952, Fla. Stat. (Doc. 96 at 16-19.)

Nor does the record establish that territory assignment—on which the glass percentage (55/65/75%) turns—was done in accordance with the endorsement ("Territories are established by the Office of Management and Budget"). (Doc. 89, Ex. A at 75.) There is no evidence of the territory for this loss.

In short, on this record a reasonable fact-finder could conclude that Amica has not proven that the $1,339.54 paid is indeed the schedule-compliant limit of liability for this claim. That is the opposite of what Rule 1.510 requires of the moving party.

B. The appraisal award is binding as to "amount of loss" and creates at least a triable dispute about what remains owed.[1]

The Appraisal Award—$1,678.27—is a binding determination of the "amount of loss" within the policy's definition ("the lesser of . . . actual cash value . . . [or] the amount necessary to repair or replace"). (Doc. 89, Ex. A at 69; Doc. 96, Ex. D; see *Licea*, 685 So. 2d at 1288). Amica's payment of $1,339.54 left a balance of $338.73 unpaid (exclusive of sales tax). (Doc. 96 at 21-22). The award is evidence—indeed, binding evidence—of the loss amount. If Amica contends it can lawfully withhold the difference because of the endorsement, Amica must prove the endorsement applies to the entire award and that the schedule amount is indeed $1,339.54. The record does not conclusively establish those propositions, and Plaintiff has pointed to admissible record evidence—the award itself—that directly supports its claim of an unpaid balance. (Doc. 96, Ex. D). Under the federalized Rule 1.510, that is more than enough to defeat Amica's motion. *See Anderson,* 477 U.S. at 255*; Celotex*, 477 U.S. at 325. (all justifiable inferences drawn for the nonmovant).

Amica argues it "reserved rights" by invoking appraisal. The policy says neither party waives any rights by agreeing to an appraisal. (Doc. 89, Ex. A at 70). That permits Amica to assert the endorsement as a limitation in litigation; it does not authorize the insurer to disregard an award's binding amount-of-loss determination or avoid its burden of proof on the limitation. *See Curran*, 135 So. 3d at 1076-79.

C. Canons of construction reinforce the outcome.

This dispute turns on the text of the endorsements and the appraisal clause, read as a whole and applied to the facts required by those texts.

1. Whole-text canon. The policy must be read "as a whole," giving operative effect to all provisions and avoiding interpretations that render any clause superfluous. *See Ruderman*, 117 So. 3d at 948-49 (noting the "surplusage canon" and whole-contract reading). Here, the

appraisal clause declares that the "amount of loss . . . will be binding." (Doc. 89, Ex. A at 69). The payment schedule in FL 00 12 then defines the insurer's limit for windshield losses "[u]nless otherwise agreed"—a phrase that presupposes potential agreement on a different amount (e.g., an appraisal award or a negotiated price). (Doc. 89, Ex. A at 74-75). The harmonious reading is: appraisal fixes the loss amount; the insurer may still assert a limitation, but it must prove the limitation's factual preconditions (e.g., territory, NAGS inputs) and compliance—particularly where the schedule depends on external facts ("on the date the approved installation occurs"; "Territories . . . established by OMB"). (Doc. 89, Ex. A at 74-75).

2. Plain-meaning canon. "Unless otherwise agreed . . . our limit of liability . . . will be" the schedule. (Doc. 89, Ex. A at 74). That is clear language capping payment—but only if the schedule's inputs are satisfied and if there has not been a different agreement. Amica emphasizes the cap; Plaintiff emphasizes the appraisal agreement (binding award). The endorsement's "At your request, we will identify a qualified glass repair facility . . . that will perform the repairs at the price shown on the schedule" further indicates the schedule's function: it guarantees a network rate if the insured/assignee chooses a network shop. (Doc. 89, Ex. A at 75). The record does not show Plaintiff ever requested such a referral or that Amica ever offered one. Whether the insured's/assignee's election affects the cap is at least debatable, which again defeats summary judgment for Amica under Florida's rules of construction. *See CTC Dev. Corp*., 720 So. 2d at 1076 (plain meaning controls unless ambiguous; ambiguity construed against the insurer).

3. Contra proferentem. If the interface between a binding appraisal on "amount of loss" (Doc. 89, Ex. A at 69) and the payment schedule (Doc. 89, Ex. A at 74-75) is deemed ambiguous—and reasonable judges might differ as to which controls under various factual permutations—the ambiguity is construed against the drafter/insurer and in favor of coverage/payment. *See Ruderman*, 117 So. 3d at 948-49.

The Court does not need to finally construe the policy today; it suffices that Amica's construction is not compelled as a matter of law on this record and that material fact issues remain.

D. Amica's evidentiary presentation fails Rule 1.510(c)(4).

Rule 1.510(c)(4) requires summary-judgment affidavits to be (i) based on personal knowledge, (ii) to set out facts that would be admissible, and (iii) to show the affiant's competence. The Eldridge Affidavit falls short in several respects:

1. Personal knowledge vs. file review. The affidavit repeatedly relies on knowledge "obtained . . . by reviewing documents kept in the claim file" rather than first-hand knowledge. (Doc. 89, Ex. A at 18-19 (¶5)). File-based knowledge can be sufficient if the documents are themselves admissible and authenticated as business records. But here, the crucial schedule inputs (NAGS list price, NAGS labor hours, OMB territory) originate from third-party sources or vendor systems and are offered through a summary ("Payment Breakdown") without an authenticating custodian for those sources. (Doc. 89, Ex. A5; see Doc. 88 at ¶8). That is classic hearsay-within-hearsay. §§ 90.802, 90.805, Fla. Stat.

2. Authentication. Florida permits self-authentication by certification for business records. § 90.902(11), Fla. Stat. Amica submitted no certification. The Court does not foreclose Amica from authenticating records at trial; the point is that at summary judgment, the proffered evidence must be in admissible form or be demonstrably reducible to admissible form. Fla. R. Civ. P. 1.510(c)(2)-(4). On this record, the necessary predicate is not present.

3. Legal conclusions. Statements that the payment was "pursuant to the terms of the subject policy" (Doc. 89, Ex. A at 20 (¶10)) are conclusions, not facts. They are not credited on summary judgment. *See Daeda*, 698 So. 2d at 619.

4. Corporate identity. Mr. Eldridge states he is a Claims Supervisor at Amica Mutual Insurance Company, not Amica Property & Casualty, the named defendant. (Doc. 89, Ex. A at 18 (¶2)). Although affiliation may permit him to testify if he is "a custodian or other qualified witness" with knowledge of the records, the affidavit does not explain the inter-company record-keeping sufficiently to allay concerns identified by Florida courts when a witness seeks to authenticate another entity's records. *See Jackson*, 236 So. 3d at 1172.

5. Best evidence. To prove the contents of NAGS publications (list price, labor hours), Amica should present the original (or a properly authenticated copy) of the relevant NAGS entries or sworn testimony by a qualified custodian/witness. § 90.952, Fla. Stat. The present record offers neither.

In sum, Amica's evidentiary showing does not satisfy Rule 1.510(c)(4). Even if the Court were to consider the exhibits as some evidence, they do not dispel the genuine disputes identified by Plaintiff.

E. The prior order (Doc. 74) underscores these evidentiary concerns.

Earlier in this same case, the Court struck a third-party administrator's affidavit (Oshida) and denied Amica's second summary-judgment motion for lack of competent evidence to support the payment-schedule defense. (Doc. 74). The present motion does not cure the same core problems: reliance on third-party data without a proper predicate; unauthenticated documents; and an absence of transparent, admissible facts establishing the schedule inputs and compliance. (*See* Doc. 96 at 19-20 (describing the Court's April 7, 2025, order)).

F. The "null and void" clause raises further fact questions.

FL 00 12 states: "The prices shown on the schedule are the current contracted prices with our network participants. Should the contract pricing change, the scheduled pricing shown here will become null and void." (Doc. 89, Ex. A at 75.) Amica submitted no evidence of the "current contracted prices" in effect on the date of installation, nor of whether any pricing change rendered the printed schedule "null and void." (Doc. 96 at 20). If the schedule was in fact null and void on the date at issue, Amica's reliance on it would fail. That is yet another factual matter precluding summary judgment.

V. RESPONSES TO AMICA'S SPECIFIC ARGUMENTS

1. "The endorsement controls, so no breach." The endorsement is part of the contract and will be enforced according to its text. But to prevail on summary judgment, Amica had to prove the facts that trigger and satisfy that text—territory, NAGS list price, labor hours, kits, molding, and timing ("on the date the approved installation occurs"). (Doc. 89, Ex. A at 74-75). The present record does not do so. Moreover, the Appraisal Award—binding as to the amount of loss—creates at least a factual dispute about what remains owed even if the endorsement applies. (Doc. 96, Ex. D).

2. "No genuine factual dispute exists." There is at least one obvious dispute: whether $1,678.27 (the award) or $1,339.54 (the payment) is the proper amount payable under the policy. (Docs. 89, 96). The answer depends on contested facts about the endorsement's inputs and on contract interpretation that is not compelled in Amica's favor as a matter of law. At a minimum, the award itself creates a jury-triable question. *See Anderson*, 477 U.S. at 255.

3. "Procedural objections (standing, pleadings, etc)." Amica's present motion does not raise standing or pleading defects. Plaintiff sues as assignee of the insureds for breach of contract, which embraces non-payment of the appraisal award's difference. (Docs. 4, 96). No further pleading was required to rely on the appraisal outcome

4."Partial summary judgment on endorsement validity." The Court

does not issue advisory declarations. The endorsement's validity as contract text is not disputed; the issues are application and compliance, which are fact-laden.

VI. CONCLUSION

Under Rule 1.510, Amica—as the movant who bears the burden on its affirmative defense—was required to show that no genuine dispute of material fact exists and that it is entitled to judgment as a matter of law. It has not done so.

- The record does not prove, with admissible evidence, the factual inputs necessary to establish that the $1,339.54 payment was exactly what FL 00 12 01 21 required on this claim. (Doc. 89, Ex. A at 74-75.)
- The Appraisal Award determined the amount of loss to be $1,678.27, and Amica admittedly did not pay that amount. (Doc. 96, Ex. D; Doc. 96 at 21-22.) Whether the endorsement permits Amica to withhold the difference turns on facts not conclusively established here.
- The Eldridge Affidavit and attached "breakdowns" do not satisfy the personal knowledge, admissibility, and authentication requirements of Rule 1.510(c)(4) and the Evidence Code for the critical schedule inputs (NAGS price, labor hours, OMB territory), and they contain conclusions rather than facts. (Doc. 89, Ex. A.)
- The endorsement's "null and void" clause injects an additional factual question concerning the "current contracted prices" on the loss date-another unresolved matter that precludes summary judgment. (Doc. 89, Ex. A at 75.)

Accordingly, Defendant's Motion for Summary Judgment (Doc. 89) is **DENIED**.

This denial is without prejudice to the parties' rights at trial. Consistent with Rule 1.510(f), nothing in this Order precludes any party from seeking appropriate relief based on the trial record, including directed verdict if warranted. The Court will adjudicate remaining legal issues (including any issues of policy construction) on a full evidentiary record. The Final Pretrial Conference and trial remain set per prior orders of this Court (Docs. 86, 87).

[1]The Court's conclusion that the appraisal award is binding as to the amount of loss is grounded in the parties' invocation of appraisal and this Court's order compelling that process, not on any unresolved evidentiary objection to the authentication of the policy exhibit itself. Thus, even if admissibility of the attached policy document remains contested, the existence and legal effect of the appraisal award in this case are established by the docketed proceedings and the award instrument. *See Licea*, 685 So. 2d at 1288.

* * *

Insurance—Discovery—Depositions—Examination under oath—Transcript—Insurer is required to produce transcript of examination under oath of insured prior to any deposition of insured—Insured is entitled to depose investigators and claims representative

ROSABELKIS JIMENEZ, Plaintiff, v. DIRECT GENERAL INSURANCE COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County, Civil Division. Case No. 25-CC-005873. October 8, 2025. Lisa A. Allen, Judge. Counsel: Timothy A. Patrick, Patrick Law Group, P.A., Tampa, for Plaintiff.

ORDER GRANTING IN PART PLAINTIFF'S MOTION TO COMPEL, MOTION FOR SANCTIONS & MOTION FOR PROTECTIVE ORDER

THIS MATTER having come before the court on September 17, 2025 on Plaintiff's Motion to Compel, Motion for Sanctions and Motion for Protective Order. (Docket # 33). Having reviewed and considered the motions, the supporting memoranda, the relevant materials in the file, the arguments presented by counsel, and the applicable law, and being otherwise fully advised, the Court finds as follows:

1. Plaintiff's Motion to Compel, Motion for Sanctions and Motion for Protective Order is **HEREBY GRANTED IN PART**.

2. Defendant conducted an Examination Under Oath of the named insured/Plaintiff on September 4, 2024. Said EUO is relevant as F.S. 92.33 applies. Defendant must produce the Examination Under Oath (EUO) transcript. Defendant will request the EUO transcript from the court reporter and will produce it to Plaintiff within 30 days of September 30, 2025.

3. Said EUO transcript will be produced prior to any deposition of the Plaintiff. As such, Plaintiff's Motion for Protective Order is **HEREBY GRANTED**.

4. Plaintiff is entitled to conduct the depositions of SIU investigators, Vanessa Diaz, Joel Gonzalez, and claim representative, April Leake, as they are relevant fact witnesses. Plaintiff did agree to limit said depositions to 1 hour or less. As such, Defendant's Motion for Protective Order is **HEREBY DENIED**.

5. All depositions, including the deposition of the Plaintiff, must be scheduled within 60 days to occur within 90 days.

6. The Court extends the discovery deadline in the DCM Order by 90 days, along with all other deadlines. The parties shall draft an Amended DCM Order with said extended deadlines.

* * *

Insurance—Discovery—Depositions—Examination under oath—Transcript—Entitlement

ALEXANDER TRUJILLO, Plaintiff, v. DIRECT GENERAL INSURANCE COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County, Civil Division. Case No. 25-CC-006276. October 28, 2025. Jessica G. Costello, Judge. Counsel: Timothy A. Patrick, Patrick Law Group, P.A., Tampa, for Plaintiff. Marsha Moses and Christos Pavlidis, Kubicki Draper, for Defendant.

ORDER GRANTING IN PART PLAINTIFF'S MOTION TO COMPEL, MOTION FOR SANCTIONS & MOTION FOR PROTECTIVE ORDER & DENYING DEFENDANT'S MOTION FOR PROTECTIVE

THIS MATTER having come before the court on October 28, 2025 on Plaintiff's Motion to Compel, Motion for Sanctions and Motion for Protective Order. (Docket #40), Defendant's Motion for Sanctions and Motion to Compel Deposition. (Docket #44) and Defendant's Motion for Protective Order (Docket #39). Having reviewed and considered the motions, the supporting memoranda, the relevant materials in the file, the arguments presented by counsel, and the applicable law, and being otherwise fully advised, the Court finds as follows:

1. Plaintiff's Motion to Compel, Motion for Sanctions and Motion for Protective Order is **HEREBY GRANTED IN PART**.

2. Defendant conducted an Examination Under Oath of the named insured/Plaintiff. Defendant must produce the Examination Under Oath (EUO) transcript. Defendant will request the EUO transcript from the court reporter and will produce it to Plaintiff within 30 days of October 28, 2025.

3. Said EUO transcript will be produced prior to any deposition of the Plaintiff.

4. Plaintiff is entitled to the depositions of SIU investigators, Fred Velasquez and Ashley McClain, who are fact witnesses. As such, Defendant's Motion for Protective is **HEREBY DENIED**.

5. Defendant's Motion to Compel Deposition and Motion for Sanctions was rendered moot.

6. The depositions of Fred Velasquez and Amy McClain shall be scheduled within 10 days for a date to occur within 60 days.

7. The Court extends the DCM Order deadline for the completion of fact and expert discovery for a period of 75 days.

8. Plaintiff's deposition shall occur prior to said extended deadline.

9. [sic]

* * *

Insurance—Property—Bad faith claims—Conditions precedent—Adverse adjudication and final judgment of breach—Retroactive application—Retroactive application of statute requiring adverse adjudication and final judgment of breach as prerequisite to statutory bad faith action against property insurer is impermissible where statute does not contain any express language reflecting legislative intent that it be applied retroactively, and statute that alters conditions under which action can be brought is substantive—Even if statute is deemed remedial, retroactive application would still be impermissible where applying statute to loss that occurred prior to its enactment would impair vested rights

SHANNON KELLEHER, et al., Plaintiffs, v. STATE FARM FLORIDA INSURANCE COMPANY, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. COINX25026849. Division 62. September 25, 2025. Woody Clermont, Judge. Counsel: Philip Jones, The Wind Law Group, PLLC, for Plaintiffs. Maxim Tsoy, for Defendant.

ORDER REGARDING WHETHER SECTION 627.1551, FLORIDA STATUTES IS TO BE APPLIED PROSPECTIVELY OR RETROACTIVELY

THIS CAUSE came before the Court on Defendant's Motion to Dismiss Plaintiff's statutory bad faith claim on grounds that Plaintiff has not pled an "adverse adjudication" as required by section 624.1551, Florida Statutes. The Court, having reviewed the motion, the authorities cited, and being otherwise fully advised in the premises, finds as follows:

I. Background

The loss at issue occurred on November 19, 2022, prior to the enactment of section 624.1551, Florida Statutes. Section 624.1551 became effective on December 16, 2022, and provides that in any claim for extracontractual damages under section 624.155(1)(b), no action lies until an insured has established through an adverse adjudication by a court of law that the property insurer breached the contract, and a final judgment or decree has been entered against the insurer.

Effective December 16, 2022, section 624.1551 provides:

> Notwithstanding any provision of s. 624.155 to the contrary, in any claim for extracontractual damages under s. 624.155(1)(b), no action shall lie until a named or omnibus insured or a named beneficiary has established through an adverse adjudication by a court of law that the property insurer breached the insurance contract and a final judgment or decree has been rendered against the insurer. Acceptance of an offer of judgment under s. 768.79 or the payment of an appraisal award does not constitute an adverse adjudication under this section. The difference between an insurer's appraiser's final estimate and the appraisal award may be evidence of bad faith under s. 624.155(1)(b), but is not deemed an adverse adjudication under this section and does not, on its own, give rise to a cause of action.

The statute at issue, establishes prerequisites for bringing civil remedy actions against property insurers for extracontractual damages. Specifically, it requires an adverse adjudication by a court of law that the insurer breached the insurance contract and a final judgment or decree against the insurer before such actions can proceed. The Court's determination here raises two key legal issues: whether section 624.1551 applies retroactively to claims arising before its enactment and whether the statute is procedural or substantive in nature. The Court's inclination is that it would be problematic for the Court to hold a plaintiff responsible to following a statute which did not exist at the time of loss or when the policy was issued. *See, e.g., Hassen v. State Farm Mut. Auto. Ins.*, 674 So. 2d 106, 108 (Fla. 1996) [21 Fla. L. Weekly S102c] ("[I]t is generally accepted that the statute in effect at the time an insurance contract is executed governs substantive issues arising in connection with that contract.").

II. Legal Standards

Florida courts apply a two-prong test when determining retroactivity of statutes:

> 1. Whether the statute contains clear legislative intent for retroactive application; and
>
> 2. If so, whether retroactive application would be constitutional. *Cantens v. Certain Underwriters at Lloyd's London*, 388 So. 3d 242 (Fla. 3d DCA 2024) [49 Fla. L. Weekly D360a].

Substantive statutes are presumed to apply prospectively unless expressly stated otherwise. *VanBibber v. Hartford Accident & Indem. Ins. Co.*, 439 So. 2d 880 (Fla. 1983). Even remedial statutes may not be retroactively applied where such application would impair vested rights, create new obligations, or impose new penalties. *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.*, 869 So. 2d 1210 (Fla. 2d DCA 2004) [29 Fla. L. Weekly D761b]. Section 624.1551 does not contain explicit language indicating legislative intent for retroactive application. In similar cases, courts have held that statutes lacking such clear intent cannot be applied retroactively. For example, in *Buis v. Universal Property & Casualty Insurance Company*, the court concluded that section 627.70152, which imposed presuit notice requirements, could not be applied retroactively due to the absence of clear legislative intent. *Buis v. Universal Property & Casualty Insurance Company*, 394 So. 3d 738 (Fla. 4th DCA 2024) [49 Fla. L. Weekly D1850b]. However, there is a dispute of whether this is the law. For example, some courts have found the presuit notice requirement of section 627.70152(3) to be procedural, not substantive, in nature. *Cantens*, 388 So. 3d at 245. Procedural statutes are those that do not create or define rights, but rather govern the "course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion." *Haven Fed. Sav. & Loan Ass'n v. Kirian*, 579 So. 2d 730, 732 (Fla. 1991) (quoting *In re Fla. Rules of Crim. Proc.*, 272 So. 2d 65, 66 (Fla. 1972) (Adkins, J., concurring)). "The presumption against retroactive application of a law that affects substantive rights, liabilities, or duties is a well established rule of statutory construction." *Arrow Air, Inc. v. Walsh*, 645 So. 2d 422, 425 (Fla. 1994).

III. Analysis

Section 624.1551 does not contain any express language reflecting legislative intent for retroactive application. Courts addressing analogous statutes have refused retroactive application in the absence of such intent. *See Buis v. Universal Prop. & Cas. Ins. Co.*, 394 So. 3d 738 (Fla. 2d DCA 2024) [49 Fla. L. Weekly D1850b] (holding section 627.70152, which imposed presuit notice requirements, could not apply retroactively).

The distinction between substantive and procedural statutes is critical in determining retroactivity. Substantive statutes prescribe legal duties and rights, while procedural statutes concern the methods and means of enforcing those rights. *Cole v. Universal Prop. & Cas. Ins. Co.*, 363 So. 3d 1089 (Fla. 4th DCA 2023) [48 Fla. L. Weekly D916a] (holding that section 627.70152 is to be applied retroactively as the statute is procedural). Substantive statutes are presumed to apply prospectively, whereas procedural statutes may apply retroactively. *Cantens v. Certain Underwriters at Lloyd's London*, 388 So. 3d 242 (Fla. 3d DCA 2024) [49 Fla. L. Weekly D360a].

Florida courts consistently held that a statutory bad faith claim was premature until two conditions were satisfied: (1) the insurer raised no defense that would defeat coverage, or any such defense was adjudicated adversely to the insurer; and (2) the actual extent of the insured's loss was determined. This principle was articulated in cases such as *Vest v. Travelers Ins. Co.*, 753 So. 2d 1270 (Fla. 2000) [25 Fla. L. Weekly S177a], and *Blanchard v. State Farm Mut. Auto. Ins. Co.*, 575

So. 2d 1289 (Fla. 1991). The Florida Supreme Court in *Blanchard* explained that "an insured's underlying first-party action for insurance benefits against the insurer necessarily must be resolved favorably to the insured before the cause of action for bad faith in settlement negotiations can accrue." *Trafalgar at Greenacres, Ltd. v. Zurich American Ins. Co.*, 100 So. 3d 1155, 1157 (Fla. 4th DCA 2012) [37 Fla. L. Weekly D2139b] (citing *Blanchard*, 575 So 2d at 1291). Favorable resolution is a different requirement than adverse adjudication and final judgment of breach. A right was taken away that plaintiffs could have pursued a bad faith without requiring an adverse adjudication and judgment, prior to the enactment of the new statute. After the statute, that right no longer exists.

Thus in light of this, section 624.1551 is substantive, not procedural. It imposes a new prerequisite to a statutory bad faith action that did not exist when the loss here accrued—namely, the requirement of an adverse adjudication and final judgment of breach before suit may be filed. Statutes altering the conditions under which a cause of action may be brought are substantive. *Menendez v. Progressive Exp. Ins. Co.*, 35 So. 3d 873 (Fla. 2010) [35 Fla. L. Weekly S222b] (presuit notice statute substantive and not retroactive); *Hughes v. Universal Prop. & Cas. Ins. Co.*, 374 So. 3d 900 (Fla. 3d DCA 2023) [49 Fla. L. Weekly D153a] (same with respect to section 627.70152).

Even if section 624.1551 were deemed remedial, retroactive application would still be impermissible if it impairs vested rights, creates new obligations, or imposes new penalties. In *Vo v. Scottsdale Insurance Company*, the court held that section 624.1551 could not apply retroactively because it impaired the insured's vested right to pursue a bad faith claim of a loss which occurred before the statute's enactment. *Vo v. Scottsdale Ins. Co.*, __ So. 3d __, 2025 WL 611505, at *3 (Fla. 1st DCA, Feb. 26, 2025) [50 Fla. L. Weekly D492b]. This aligns with the principle that retroactive application of substantive statutes is prohibited when it affects vested rights or imposes new legal burdens. *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.*, 869 So. 2d 1210 (Fla. 2d DCA 2004) [29 Fla. L. Weekly D761b].

Applying section 624.1551 to a loss that occurred prior to its enactment would impair Plaintiff's vested rights existing under the law as it stood on November 19, 2022. "But we must disagree that on this basis, the statute can be applied retroactively under *Arrow Air* and *Menendez v. Progressive Exp. Ins. Co.*, 35 So. 3d 873 (Fla. 2010) [35 Fla. L. Weekly S222b], as it is undeniable that the statute eliminates a previously valid cause of action, in fact, a cause of action authorized by the Legislature and not a cause of action under the common law." *Vo*, 2025 WL 611505, at *2. Thus the Court in *Vo* holding that section 624.1551 cannot be applied retrospectively held, "Therefore, we find that the statute cannot be applied retroactively. We reverse and remand with directions to deny the motion to dismiss and reinstate the suit." *Id.* at *3. Thus the answers to our questions here are that it is substantive and prospective, not only based on an analysis of the law, but on the application of *Vo* as well, which specifically addressed section 624.1551.

IV. Conclusion

For these reasons, the Court concludes that section 624.1551, Florida Statutes, is a substantive statute that applies prospectively only. Because Plaintiff's claim arises from a loss on November 19, 2022, prior to the statute's effective date, Defendant's motion to dismiss on this ground is therefore to be denied.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Defendant's Motion to Dismiss based on this particular argument is **DENIED** as to this specific ground and count of the Complaint.

* * *

Attorney's fees—Amount

DC PORTFOLIO SERVICES, LLC, Plaintiff, v. LORI CONTRERAS, Defendant. County Court, 18th Judicial Circuit in and for Seminole County. Case No. 2022-SC-3266. October 3, 2025. Wayne Culver, Judge. Counsel: Bryan A. Dangler, The Power Law Firm, Altamonte Springs, for Defendant.

[Order granting motion for fees published at 33 Fla. L. Weekly Supp. 315a.]

FINAL JUDGMENT OF ATTORNEY'S FEES AND COSTS

THIS CAUSE CAME to be heard during an evidentiary proceeding on October 1, 2025, upon Defendant's Motion for Attorney Fees and Costs, and the Court having reviewed the entire court file, including the relevant time records and expert reports submitted, having heard testimony by both counsel and his expert, and being otherwise fully advised in the premises, finds as follows:

1. The issues for consideration by this Court are to determine the reasonable hours expended by Defendant's counsel, Bryan A. Dangler, Esq. ("Mr. Dangler"), for his work in connection with this action, and at what hourly rate.

2. In support of his request, Mr. Dangler submitted an "Affidavit of Attorney Fees and Costs".

3. Mr. Dangler's affidavit states that he has been a member of the Florida Bar in good standing since 2014 with his practice focused on the areas of consumer debt at both the trial and appellate levels. The affidavit, time sheet attached thereto, and Mr. Dangler's testimony, reflect a total time of 17.0 hours billed at an hourly rate of $495.00. No costs were incurred by Mr. Dangler during the case.

4. During the hearing, Mr. Dangler provided testimony attesting to the reasonableness of the time he incurred, that such time was commensurate with that of similar attorneys in similar locale and field, that none of the time he incurred was duplicative, and that his hourly rate was reasonable given his prior experience, past successes, and years of practice.

5. Mr. Dangler's time and hourly rate was also supported by a "Declaration" authored by Mr. Shawn Wayne, Esq. ("Mr. Wayne" or "fee expert") ("expert report"), a qualified attorney fee expert and active member of the Florida Bar for over a decade. In addition to his expert report, Mr. Wayne, who has previously testified as a fee expert in other cases, provided testimony during the hearing in support of the reasonableness of Mr. Dangler's time incurred, given the issues that were presented and the result that he ultimately achieved. Mr. Wayne's expert report and his testimony during the hearing affirmed the work and skill displayed by Mr. Dangler in undertaking the case and bringing it to a successful end. He also affirmed Mr. Dangler's hourly rate as reasonable given his years of practice, experience, and success in prior cases, in combination with the customary fees charged for similar work by attorneys in the area, and the rates that Mr. Dangler has been awarded in prior cases.

6. The Court, acting in its fact-finding capacity, determines that the reasonable number of hours spent by Mr. Dangler in representing the Plaintiff in this case is 17.0 hours. No reduction in the amount of time spent is warranted.

7. The Court, acting in its fact-finding capacity, further determines that a reasonable hourly rate for Mr. Dangler's work in this case is $495.00. No reduction in the hourly rate is warranted.

8. These findings are based upon all the competent substantial evidence and testimony presented to the Court, together with all the factors enumerated both in the Florida Bar Code of Ethics 4-1.5, and *Florida Patients Compensation Fund v. Rowe and Standard Guaranty Ins. Co. v. Quanstrom*, 472 So. 2d 1145 (Fla. 1985), and prior precedent finding Mr. Dangler's hourly rate in other matters reasonable. *See Synchrony Bank v. Basilio Gonzalez*, 32 Fla. L. Weekly

Supp. 467a (Fla. 10th Jud. Cir. 2024); *Citibank, N.A. v. Youssef Lambaitil*, 32 Fla L. Weekly Supp. 248a (Fla. 9th Jud. Cir. 2024); *Pabel Lima v. Edgewater of Homestead Condo Ass'n., Inc.*, 30 Fla. L. Weekly Supp. 773b (Fla 11th Jud. Cir. 2023).

9. Accordingly, this Court finds that the reasonable hourly rate times the reasonable (respective) hours equal $8,415.00.00, which represents the "lodestar" for the attorney's fees to be awarded to Mr. Dangler in this case.

10. As for the Defendant's attorney fee expert, the Court finds that the contracted hourly rate of $495.00 is reasonable for the work performed by Mr. Wayne, and that the 4.5 hours he incurred were reasonably expended, for a total of $2,227.00. *Stokus v. Phillips*, 651 So. 2d 1244 (Fla. 2nd DCA 1995) [20 Fla. L. Weekly D627c].1732+

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Bryan A. Dangler, Esq. ("Judgment Creditor"), as counsel for the Defendant, shall recover from the Plaintiff, DC Portfolio Services, LLC, ("Judgment Debtor"), the following: **$8,415.00** for attorney's fees, and **$2,227.00** for expert witness fees, for a total sum of **$10,642.00**, all of which shall bear post-judgment interest at the statutory rate from the date this Final Judgment is signed and adjusted quarterly in accordance with the interest rate in effect on the date as set by the Chief Financial Officer, for which amount let execution issue.

IT IS FURTHER ORDERED that the Judgment Debtor, whose mailing addresses are DC Portfolio Services, LLC, c/o Registered Agents, Inc., 2894 Remington Green Ln., Ste. A, Tallahassee, FL 32308, and DC Portfolio Services, LLC, 220 Penn Avenue, Ste. 221, Scranton PA 18503, shall complete under oath, Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the Judgement Creditor, at The Power Law Firm, 5415 Lake Howell Rd. #189, Winter Park, FL 32792, within forty five (45) calendar days from the date of this Final Judgment, unless this Final Judgment is satisfied or post-judgment discovery is stayed.

IT IS FURTHER ORDERED that this Court reserves jurisdiction for purposes of enforcing this Final Judgment, to enter further orders that are proper and to compel the Judgment Debtor to complete Form 1.977, including all required attachments, and to serve it on the Judgement Creditor, and to award of any additional attorney's fees and costs that may be incurred to enforce this Final Judgment against the Judgment Debtor.

* * *

Consumer law—Debt collection—Discovery—Objection to plaintiff's notice of production of seven months of defendant's personal bank statements from non-party bank is sustained where statements are neither material nor probative, material sought is disproportionate to any legitimate need in case, and request imposes undue burden and intrusion on defendant's private financial affairs

CREDIT CORP SOLUTIONS, INC., Plaintiff, v. DAVID MCKINNEY, Defendant. County Court, 20th Judicial Circuit in and for Lee County, Civil Division. Case No. 25-CC-000325. October 3, 2025. Lindsay S. Garza, Judge. Counsel: Nicholas A. Yanora, Marcadis Singer, P.A., Tampa, for Plaintiff. Richard F. Cipriano, III, The Cipriano Law Firm, LLC., Brandon, Defendant.

ORDER SUSTAINING DEFENDANT'S AMENDED OBJECTION TO PLAINTIFF'S NOTICE OF PRODUCTION FROM NON-PARTIES

THIS CAUSE having come before the Court at the hearing held on September 30, 2025, on Defendant's Amended Objection to Plaintiff's Notice of Production from Non-Parties (Doc. #25). The Court having reviewed and considered, Plaintiff's Notice of Production from Non-Parties which included the attached Subpoena Duces Tecum Without Deposition directed to non-party, Chase Bank (Doc. #22) ("Notice of Production"), Defendant's Amended Objection to Plaintiff's Notice of Production from Non-Parties (Doc. #25), and Defendant's Memorandum of Law in Support of Defendant's Amended Objection to Plaintiff's Notice of Production from Non-Parties (Doc. # 27), the court file, arguments from counsel for the respective parties, and being otherwise fully advised in the premises, the Court finds as follows:

1. That the Notice of Production, which included the attached subpoena duces tecum without deposition, seeks documents that are not relevant to any material issue in this case and are not necessary for Plaintiff to prove its claims.

2. That the subpoena duces tecum without deposition directed to Chase Bank seeks Defendant's personal bank statements related to a Chase Bank account for a seven-month period, constituting an impermissible fishing expedition into Defendant's private financial affairs that exceed the scope of discovery permitted under the Florida Rules of Civil Procedure. Moreover, the information sought is entirely unnecessary and disproportionate to any legitimate need in this case and imposes an undue burden and intrusion on Defendant's private financial affairs.

3. That the requested documents are neither material nor probative and would not advance Plaintiff's claims.

4. That Defendant has not disputed the existence of the alleged debt; however, this does not constitute an admission of liability. Even so, Plaintiff is not entitled to access Defendant's private bank statements, as such documents are not necessary to prove Plaintiff's claims and fall outside the scope of permissible discovery.

ACCORDINGLY, IT IS ORDERED AND ADJUDGED THAT:

1. Defendant's Amended Objection to Plaintiff's Notice of Production from Non-Parties is **SUSTAINED**.

2. Plaintiff shall not issue, enforce, or otherwise pursue any subpoena directed to Chase Bank seeking Defendant's personal bank statements in connection with this matter as presently requested.

* * *

Creditors' rights—Garnishment—Dissolution of writ—Clerk was required to automatically dissolve writ of garnishment where plaintiff failed to file opposition to claim of exemption within time limit set by statute—Plaintiff not precluded from obtaining subsequent writ

UHG I LLC, Plaintiff, v. JOHN BLANTON, Defendant, and WEST FRASER, INC., Garnishee. County Court, 1st Judicial District in and for Escambia County. Case No. 2024 CC 001223. Division 1. October 7, 2025. Charles P. Young, Judge. Counsel: Jeffrey Blacher, Coral Gables, for Plaintiff. Robert G. Churchill, Jr., Churchill Law Group, PLLC, Tallahassee, for Defendants.

ORDER CONFIRMING THE CLERK'S DISSOLVING OF PLAINTIFF'S WRIT OF GARNISHMENT and FINDING DEFENDANT'S CLAIM OF EXEMPTION MOOT

THIS CAUSE, having come before the Court upon the Defendant's Motion for Claim of Exemption heard on October 3, 2025 via Zoom and counsel for the Plaintiff and Defendant both being present and the Court hearing testimony of the Defendant, and the court being otherwise fully advised in the premises, finds as follows:

1. A Writ of Garnishment was issued on July 16, 2025.

2. On August 1, 2025 a timely Notice and the Writ was provided to the Defendant.

3. Garnishee filed an Answer on August 5, 2025.

4. Defendant filed a timely Claim of Exemption (COE) on August 11, 2025.

5. The Answer of the Garnishee was served on the Defendant on August 14, 2025.

6. On September 3, 2025 the Clerk of Court dissolved the Writ.

7. On September 16, 2025 the Plaintiff filed an opposition to the

Claim of Exemption.

8. Pursuant to §77.041 (3), the Plaintiff has a time limit to file an objection to a COE or the clerk "must automatically dissolve the writ. ."

9. The garnishment statute is to be strictly construed. *Little Brownie Properties, Inc., v. Wood*, 328 So.3d 1049 (Fla. 5th DCA 2021) [46 Fla. L. Weekly D2165b].

10. As noted in Footnote of the *Little Brownie Properties, Inc., v. Wood,* the Plaintiff is not precluded from obtaining a subsequent Writ.

it is hereby, **ORDERED AND ADJUDGED:**

Defendant's Claim of Exemption is Moot as the Writ of Garnishment was legally dissolved by the clerk on September 16, 2025 pursuant to Chapter 77.

* * *

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MISCELLANEOUS REPORTS

Municipal corporations— Zoning—Residential—Offstreet parking—Garage requirements—Exceptions—Reasonable accommodation—Request of family community residence that houses disabled residents for reasonable accommodation from off-street parking requirements of city land development code due to conversion of garage into air-conditioned storage space for residents' belongings and essential items for facility's operation—Request is granted where garage conversion is necessary and appropriate to provide residents equal opportunity to use and enjoy residence

IN RE: PETITION FOR REASONABLE ACCOMMODATION REQUEST, 9022 NW 47 COURT, CORAL SPRINGS. PINE RIDGE ALF, LLC (Applicant). The City of Coral Springs. Case No. RA25-0002. November 10, 2025. Harry Hipler, Special Magistrate. Counsel: Janelle Marie Johnson and Ben Johnson, Pro se, Petitioners for Pine Ridge ALF, LLC. Christina Gomez, Assistant City Attorney, for City of Coral Springs.

FINAL ORDER

THIS CAUSE having come before Harry Hipler, Esquire, the Special Magistrate of the City of Coral Springs, upon the Reasonable Accommodation Request submitted by the Applicant, Pine Ridge ALF, LLC, and after holding a public hearing on November 4, 2025, with the City of Coral Springs ("the City"), appearing through counsel, Christina Gomez, Assistant City Attorney and Elizabeth Chang, Zoning Manager, and the Applicants appearing after proper notice, the Special Magistrate does hereby issue its findings of fact, conclusions of law, and orders as follows:

I. FINDINGS OF FACT

A. The real property is located at 9022 NW 47 Court in the Pine Ridge neighborhood, which is zoned One-Family Dwellings (RS-4). The subject real property is in the names of Janelle Marie Johnson and Ben Johnson, as husband and wife.

B. The Applicants are requesting a reasonable accommodation from the off-street parking requirements of the City's Land Development Code, which requires one-family dwellings which contain four (4) bedrooms to have a fully enclosed garage designed for the storage of at least two (2) automobiles. The Applicants operate the property as a family community residence as defined in Section 250152 of the Coral Springs Land Development Code.

C. The Applicant indicated that the garage was converted, without permits, prior to them purchasing the property in 2017. The separate storage space is necessary to accommodate the disabled residents by providing them extra air-conditioned storage space to house their belongings, along with essential items critical to the facility's daily operations, such as linens, cleaning, and household supplies, medical equipment, nursing supplies, medications and IV stands, mobility aids such as wheelchairs, walkers, and portable commodes for use by disabled residents who are elderly persons with disabilities.

D. As required by Section 105(5) of the Land Development Code (LDC), a request for a reasonable accommodation shall be based on the following factors: Whether the requesting party has established that they, or the individual on whose behalf the application was submitted, is protected under the FHA and/or ADA by demonstrating that they are handicapped or disabled, as defined in the FHA and/or ADA. As defined under the Americans with Disabilities Act of 1990 (ADA), 12101 to 12213 and the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), disability includes, but is not limited to breathing, walking, talking, hearing, seeing, sleeping, caring for one's self, performing manual tasks, and working. The definition also includes major bodily functions such as immune system functions, normal cell growth, digestive, bowel, bladder, neurological, brain, respirator, circulatory, endocrine [diabetes], and reproductive.

The definition of disability is subject to judicial interpretation,[1] but for purposes of this section the disabled and/or handicapped individual must show:

1. A physical or mental impairment which substantially limits one of more major life activities; or
2. A record of having such impairment; or
3. That they are regarded as having such impairment.
4. Whether the requested accommodation is reasonable and necessary to afford the handicapped/disabled individual an equal opportunity to use and enjoy the dwelling.
5. Whether the requested accommodation would impose an undue financial or administrative burden on the City of Coral Springs.
6. Whether the requested accommodation would require a fundamental alteration in the nature of the land use and zoning regulations of the City of Coral Springs.

E. Although there does not appear to be specific case law in Florida expressly stating whether a "storage room" must be provided as a reasonable accommodation to disabled residents residing in a family community residence, it would appear that courts would evaluate such a request under general principles of the ADA and FHA in determining if a storage room may be required for a reasonable accommodation for disabled residents absent undue hardship to an employer (not applicable here) or a local government (ie, is the reasonable accommodation excessively costly, disruptive, or will it fundamentally alter the nature of the land use and zoning regulations of the local government).

F. In evaluating a reasonable accommodation request, it is incumbent on the Special Magistrate to evaluate the request on a case by case basis after considering factors as the nature of the operation, size, cost, and necessity, and whether a reasonable accommodation as requested by an applicant or a reasonable accommodation is appropriate. In *Bourke v. Collins,* 142 F. 4th 918 (7th Cir. 2025), the federal appeals court ruled that where an employee requested a separate storage for his mobility scooter, it was appropriate to accommodate the disabled person with *shared* storage as that was ample to adequately remove barriers and to accommodate his disability. While *Bourke* concerns an employer/employee relationship, it does indicate that where a disabled person needs a reasonable accommodation for storage purposes, the ADA may apply and will allow the principal to decide what type of accommodation is appropriate as long as it accommodates the disabled person.

G. The following documents were considered by the Special Magistrate and are made part of the Final Order and the record:

A. Agenda.
B. Reasonable Accommodation (RA) Request Petition and Attachments.
C. Deed of Real Property
D. Staff Report from City

II. CONCLUSIONS OF LAW

A. Applicant has provided documentation regarding the above standards in reference to the residents' disabilities. The Special Magistrate found that criteria for a reasonable accommodation was met under these facts.

B. The conversion of the garage into air-conditioned storage space under these facts is necessary and appropriate to provide the residents an equal opportunity to use and enjoy the residence.

C. Applicants agree that residents shall not store vehicles at the property, and that residents shall sign leases of no less than one year.

As such, there would appear to be no fundamental alteration in the nature of the land use and zoning regulations of the City of Coral Springs.

D. Under the circumstances set forth in this Order, there is no undue financial or administrative burden in the City of Coral Springs as long as Applicant complies with this Order.

III. ORDER

Based upon the above, the Applicant has demonstrated that it has met the requirements of the LDC. Accordingly, the request for reasonable accommodation shall be granted, with the following special conditions:

a. The Applicant shall have sixty (60) days from the date of this Order to apply for any applicable change of use permits and an additional ninety (90) days in which to close out those permits;

b. The Applicants shall be required to convert the storage space back to a garage if they sell the property;

c. This reasonable accommodation shall not run with the land and not be transferable from one owner to another.

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[1]Judicial decisions have wrestled with what may be a disability under the ADA which must "substantially limit" a major life activity of an applicant. "Substantially limit" means "unable to perform a major life activity that the average person in the general population can perform. . . ." See *Toyota Motor Mfg., Ky., Inc. v. Williams,* 534 U.S. 184, 195-96 (2002) [15 Fla. L. Weekly Fed. S39a]; *Albertson's, Inc. v. Kirkingburg,* 527 U.S. 555, 565-66 (1999). In considering whether a disability "substantially limits" a major life activity, courts have considered the nature and severity of the impairment, the expected duration of the impairment, and the expected long term impact of the impairment. See *Toyota Motor Mfg., Ky., Inc. v. Williams,* 534 U.S. 184, 195-96 (2002) [15 Fla. L. Weekly Fed. S39a]; *Albertson's, Inc. v. Kirkingburg,* 527 U.S. 555, 565-66 (1999). Each case requires a fact intensive analysis, and each case requires an individual assessment of the facts and circumstances of the Applicant.

* * *

Municipal corporations— Zoning—Residential—Spacing requirements—Exceptions—Reasonable accommodation—Request of family community residence that houses disabled residents for reasonable accommodation from city land development code's requirement of minimum distance of 750 feet or 9 lots between such residences to allow distance of 735 feet between residences is granted

IN RE: PETITION FOR REASONABLE ACCOMMODATION REQUEST, 2024 NW 86 TERRACE, CORAL SPRINGS. WORLDWIDE ENTERPRISE GROUP, LLC (Applicant). The City of Coral Springs. Case No. RA25-0003. November 10, 2025. Harry Hipler, Special Magistrate. Counsel: Monique Crawford Johnson and Court Johnson, Pro se, for Worldwide Enterprise Group, LLC. Christina Gomez, Assistant City Attorney, for City of Coral Springs.

FINAL ORDER

THIS CAUSE having come before Harry Hipler, Esquire, the Special Magistrate of the City of Coral Springs, upon the Reasonable Accommodation Request submitted by the Applicant, Worldwide Enterprise Group, LLC, and after holding a public hearing on November 4, 2025, with the City of Coral Springs ("the City"), appearing through counsel, Christina Gomez, Assistant City Attorney and Elizabeth Chang, Zoning Manager, and the Applicants appearing after proper notice, the Special Magistrate does hereby issue its findings of fact, conclusions of law, and orders as follows:

I. FINDINGS OF FACT

A. The real property is located at 2024 NW 86 Terrace in the Ramblewood neighborhood, which is zoned One-Family Dwellings (RS-5). The subject real property is in the names of Monique Crawford Johnson and Courtney Johnson, wife and husband as joint tenants with rights of survivorship.

B. The Applicants are requesting a reasonable accommodation from the spacing requirements between community residences. A family community residence should be located 750 linear feet or 9 lots, whichever is greater, from the closest existing community residence. The Applicants operate the property as a family community residence as defined in Section 250152 of the Coral Springs Land Development Code. There is an existing community residence located at 8500 Royal Palm Boulevard which is approximately 735 feet from the proposed residence.

C. As required by Section 105(5) of the Land Development Code (LDC), a request for a reasonable accommodation shall be based on the following factors: Whether the requesting party has established that they, or the individual on whose behalf the application was submitted, is protected under the FHA and/or ADA by demonstrating that they are handicapped or disabled, as defined in the FHA and/or ADA. As defined under the Americans with Disabilities Act of 1990 (ADA), 12101 to 12213 and the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), disability includes, but is not limited to breathing, walking, talking, hearing, seeing, sleeping, caring for one's self, performing manual tasks, and working. The definition also includes major bodily functions such as immune system functions, normal cell growth, digestive, bowel, bladder, neurological, brain, respirator, circulatory, endocrine [diabetes], and reproductive.

The definition of disability is subject to judicial interpretation,[1] but for purposes of this section the disabled and/or handicapped individual must show:

1. A physical or mental impairment which substantially limits one of more major life activities; or

2. A record of having such impairment; or

3. That they are regarded as having such impairment.

4. Whether the requested accommodation is reasonable and necessary to afford the handicapped/disabled individual an equal opportunity to use and enjoy the dwelling.

5. Whether the requested accommodation would impose an undue financial or administrative burden on the City of Coral Springs.

6. Whether the requested accommodation would require a fundamental alteration in the nature of the land use and zoning regulations of the City of Coral Springs.

G. As indicated in Section 250152(1)(b), a reasonable accommodation shall be granted only when it is found that the applicant has demonstrated by clear and convincing evidence that both of the following two standards are met:

1. The proposed community residence will not interfere with the normalization and community integration of the residents of any existing community residence, recovery community, or congregate living facility and that the presence of other community residences, recovery communities, and/or congregate living facilities will not interfere with the normalization and community integration of the residents of the proposed community residence; and

2. The proposed community residence, in combination with any existing community residences, recovery communities, and/or congregate living facilities will not alter the residential character of the surrounding neighborhood by creating an institutional atmosphere or by creating or intensifying an institutional atmosphere or de facto social service district by clustering community residences, recovery communities, and/or congregate living facilities on a block face or concentrating them in a neighborhood.

H. The following documents were considered by the Special Magistrate and are made part of the Final Order and the record:

A. Agenda.

B. Reasonable Accommodation (RA) Request Petition and Attachments.

C. Deed of Real Property

D. Staff Report from City

II. CONCLUSIONS OF LAW

A. Applicant has provided documentation regarding the above

standards in reference to the residents' disabilities.

B. The Applicant has demonstrated by clear and convincing evidence regarding the requirements under Section 250152(1)(b) of the Land Development Code, and therefore, the Special Magistrate finds that the requested accommodation would not require a fundamental alteration in the nature of the land use and zoning regulations of the City of Coral Springs.

C. Under the circumstances set forth in this Order, there is no undue financial or administrative burden in the City of Coral Springs as long as Applicant complies with this Order.

III. ORDER

Based upon the above, the Applicant has demonstrated that it has met the requirements of the LDC. Accordingly, the request for reasonable accommodation shall be granted, with the following special conditions:

a. The Applicant shall have sixty (60) days from the date of this Order to apply for a business tax receipt and any applicable change of use permits; and

b. The Applicant shall close out all applicable permits within one hundred and eighty (180) days.

c. If the above permitting deadlines are not met, this Reasonable Accommodation shall expire, and the Applicants shall have to re-apply and have the matter set again for hearing.

d. The Applicants shall provide their license from APD to the City once obtained.

e. This reasonable accommodation shall not run with the land and not be transferable from one owner to another.

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[1]Judicial decisions have wrestled with what may be a disability under the ADA which must "substantially limit" a major life activity of an applicant. "Substantially limit" means "unable to perform a major life activity that the average person in the general population can perform. . . ." See *Toyota Motor Mfg., Ky., Inc. v. Williams,* 534 U.S. 184, 195-96 (2002) [15 Fla. L. Weekly Fed. S39a]; *Albertson's, Inc. v. Kirkingburg,* 527 U.S. 555, 565-66 (1999). In considering whether a disability "substantially limits" a major life activity, courts have considered the nature and severity of the impairment, the expected duration of the impairment, and the expected long term impact of the impairment. See *Toyota Motor Mfg., Ky., Inc. v. Williams,* 534 U.S. 184, 195-96 (2002) [15 Fla. L. Weekly Fed. S39a]; *Albertson's, Inc. v. Kirkingburg,* 527 U.S. 555, 565-66 (1999). Each case requires a fact intensive analysis, and each case requires an individual assessment of the facts and circumstances of the Applicant.

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